

APPEAL

**U.S. Bankruptcy Court
Eastern District of Pennsylvania (Philadelphia)
Adversary Proceeding #: 18-00137-mdc**

Assigned to: Chief Judge Magdeline D. Coleman

Date Filed: 06/11/18

Lead BK Case: 18-13098

Lead BK Title: Lyndel Toppin

Lead BK Chapter: 13

Demand:

Nature[s] of Suit: 91 Declaratory judgment
72 Injunctive relief –
other

Plaintiff

Lyndel Toppin

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Philadelphia, PA 19145

SSN / ITIN: xxx-xx-2550

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TERMINATED: 06/18/2019

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TERMINATED: 02/14/2019

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TERMINATED: 02/14/2019

V.

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Abdeldayem Hassan
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aka Abdeldyem Hassan

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TERMINATED: 02/14/2019

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Filing Date	#	Docket Text
09/24/2020	<u>155</u>	Transcript regarding Hearing Held on 8/21/2020 EMERGENCY MOTION FOR EXPEDITED CONSIDERATION OF PLAINTIFFS MOTION TO DISMISS ALL CLAIMS FOR RELIEF AGAINST DEFENDANT ABDELDAYEM HASSAN A/K/A ABDEL DYEM HASSAN FILED BY LYNDEL TOPPIN REPRESENTED BY STEPHEN MATTHEW DUNNE. Transcribed by Writer's cramp, Inc 268 pages. The transcript may be viewed at the Bankruptcy Court Clerk's Office. [For information about how to contact the transcriber, call the Clerk's Office] (related document(s) 153). Notice of Intent to Request Redaction Deadline Due By 10/1/2020. Redaction Request Due By 10/15/2020. Redacted Transcript Submission Due By 10/25/2020. Transcript access will be restricted through 12/23/2020. (D., Tasha) (Entered: 09/24/2020)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:	.	Chapter 13
Lyndel Toppin,	.	
	.	
Debtor.	.	Bankruptcy #18-13098 (MDC)
.....		
Lyndel Toppin,	.	
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
Sheriff of the City of	.	
Philadelphia,	.	
	.	
Defendant.	.	Adversary #18-137 (MDC)
.....		

Philadelphia, PA
August 21, 2020
11:01 a.m.

TRANSCRIPT OF EMERGENCY MOTION FOR EXPEDITED CONSIDERATION OF
PLAINTIFF'S MOTION TO DISMISS ALL CLAIMS FOR RELIEF AGAINST
DEFENDANT ABDELDAYEM HASSAN A/K/A ABDEL DYEM HASSAN FILED BY
LYNDEL TOPPIN REPRESENTED BY STEPHEN MATTHEW DUNNE

BEFORE THE HONORABLE MAGDELINE D. COLEMAN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE COURT: This is the matter of Toppin vs.
2 Williams. Appearances please.

3 MR. FILIPOVIC: For the record, Predrag Filipovic on
4 behalf of Plaintiff Lyndel Toppin, Your Honor.

5 MR. DUNNE: Stephen Dunne on behalf of Lyndel
6 Toppin, Your Honor.

7 THE COURT: Hold on. I'm writing this down. Next.

8 MS. HARPER: Good morning, Your Honor.

9 MR. DUNNE: Steve Dunn --

10 MS. HARPER: I'm sorry. Go ahead, Mr. Dave.

11 MR. OFFEN: -- David Offen appearing with -- with
12 Abdeldayem Hassan. He's already settled. He is here strictly
13 as a witness, Your Honor.

14 THE COURT: And where is he?

15 MR. OFFEN: He is -- you'll see him, he's right
16 there.

17 THE COURT: Right where?

18 MR. HASSAN: That's me.

19 THE COURT: Okay. I'm sorry, counsel. When you
20 said "with you," I thought he was in your --

21 MR. OFFEN: I'm sorry, Your Honor.

22 THE COURT: I'm looking at is he -- where is he on
23 your video?

24 MR. OFFEN: No, when I said "with him," I was making
25 sure that thing worked. Last night when I spoke to him

1 because I had spoken to Eileen, I said I will make sure he
2 appears. He's been asked as a witness and I wanted to make
3 sure he's available to testify for whoever needs him.

4 THE COURT: Okay.

5 MS. HARPER: Good morning, Your Honor. Megan Harper
6 for the City of -- for the Sheriff of the City of
7 Philadelphia. With me here in this room is Joshua Domer, also
8 for the Sheriff of the City of Philadelphia. We have two
9 witnesses also with us if you'd like to see them. They are in
10 the room with us right now.

11 THE COURT: Yes, please.

12 MS. HARPER: Okay. No, I can't see.

13 THE COURT: Well, I know you're supposed to be six
14 feet so I'm not --

15 MS. HARPER: Yeah. We got our masks on.

16 THE COURT: All right. But I'm trying --

17 MS. HARPER: If it's okay so with -- to my left.

18 THE COURT: Put your mask on, yes. Thank you.

19 MS. HARPER: To my left --

20 THE COURT: I don't want anybody saying they got
21 COVID because I had a trial. All right. So Ms. Harper and
22 Mr. Domer.

23 MS. HARPER: To my left is Captain Sean Thornton.

24 THE COURT: Captain?

25 MS. HARPER: Sean, S-E-A-N,

1 THE COURT: Uhm-hum.

2 MS. HARPER: Thornton, T-H-O-R --

3 THE COURT: R-N-T-O-N?

4 MS. HARPER: That's correct, Your Honor.

5 THE COURT: Witness. Okay. Who else?

6 MR. DORMER: To my right, Your Honor -- this is

7 Joshua Domer speaking. To my right is Jetaria Taylor,

8 Sergeant Jetaria Taylor of the Sheriff's Office.

9 THE COURT: Sergeant?

10 MR. TAYLOR: Thank you, Judge.

11 MR. DORMER: Correct.

12 THE COURT: Okay. I'm sorry. Could you say the
13 name again? I didn't hear that.

14 MR. DORMER: I will say it and spell it. It is
15 Jetaria Taylor. That's J as in Josh, E-T-A-R-I-A. Taylor, T-
16 A-Y-L-O-R. Did I spell that correctly?

17 MS. HARPER: Yes.

18 THE COURT: Jetaria Taylor?

19 MS. HARPER: Yes, ma'am.

20 THE COURT: All right. Witness.

21 MS. HARPER: Your Honor, if I may take a moment just
22 to note that the case caption has not been amended, although
23 it should be. We do have a new Sheriff for the City of
24 Philadelphia.

25 THE COURT: Right.

1 MS. HARPER: Her name is Rochelle Bilal. We've
2 noted that in a couple of recent pleadings but there hasn't
3 been an amended caption submitted to Your Honor.

4 THE COURT: Okay. And what's this new Sheriff's
5 name again?

6 MS. HARPER: Rochelle, R-O-C-H --

7 THE COURT: Oh! I can spell Rochelle.

8 MS. HARPER: Okay.

9 THE COURT: Last name?

10 MS. HARPER: Bilal, B-I --

11 THE COURT: L-A-L?

12 MS. HARPER: Yes, ma'am.

13 THE COURT: Oh! That's right. Okay. All right.

14 And then Mr. Dunne, I see you have two people with you. Who
15 are they?

16 MR. DUNNE: Yes, Your Honor. Stephen Dunne for the
17 Plaintiff Lyndel Toppin. Lyndel Toppin is on my right.

18 THE COURT: Uhm-hum.

19 MR. DUNNE: And Barrington Whyte is on my left.

20 THE COURT: Barrington, what's his last name?

21 MR. DUNNE: Last name is Whyte.

22 THE COURT: Whyte. Okay.

23 MR. DUNNE: W-H-Y-T-E.

24 THE COURT: Okay. All right. I guess, the first
25 order of business is there's an outstanding motion for summary

1 judgment, correct?

2 MS. HARPER: Yes, Your Honor.

3 THE COURT: Okay. I think the city, the issue of
4 sovereign immunity is a relevant one that's a threshold
5 matter, I'll likely have to decide. But given where we are
6 today, I just figured we'll go ahead and proceed with the
7 trial and I'll just address the sovereign immunity issue in
8 any decision I make. I mean, that's where we are. I'm not
9 going to -- I don't think it makes sense to put off the trial
10 even though they're, you know, that's a threshold matter that
11 I'll decide. Okay.

12 So the motion for summary judgment, I'm just going to
13 address in the context of addressing the entire issue, okay?

14 MS. HARPER: Yes, Your Honor. And the issues raised
15 in the motion for summary judgment also include arguments made
16 in a motion for judgment on the pleadings, which remained open
17 as well and was under advisement. So those are two open
18 matters on the docket.

19 THE COURT: Oh! I apologize. We listed as a motion
20 for summary judgment.

21 MS. HARPER: Yeah.

22 THE COURT: Again, you know, again, it may be and I
23 apologize that I saw it only as a motion for summary judgment
24 but I'll address it. Because if I believe that the city has
25 sovereign immunity, I'll just say sovereign immunity,

1 everything else doesn't matter or it doesn't have sovereign
2 immunity and I addressed the facts.

3 MS. HARPER: We had also raised additional argument
4 and we can raise that in the context of a motion and in the
5 context of the trial but arguments over quasi-judicial
6 immunity as well as arguments over damages, then we can raise
7 those again at the appropriate time.

8 THE COURT: Well, yeah, the arguments as to damages,
9 you know, that's really one as to trial. Because I don't know
10 what they're going to prove at trial as to damages. That may
11 be a post-trial issue. And again, you know, sovereign
12 immunity, quasi-judicial immunity, all of those things are
13 threshold issues that I will decide.

14 (Buzzer sounds)

15 TH COURT: The length of the -- Hello! Given the
16 length of time involved in the various, you know, I think is
17 about two years now. It went on two years, I think we just
18 proceed to trial.

19 MS. HARPER: Thank you, Your Honor.

20 THE COURT: All right. Next is this motion that was
21 filed this morning at what time, motion to exclude Mr. Hassan
22 as a witness.

23 MR. FILIPOVIC: Correct.

24 THE COURT: Who's -- who's address that?

25 MR. FILIPOVIC: I'll be arguing that, Your Honor.

10

1 THE COURT: Okay. And exactly why do you think that
2 Mr. Hassan should be excluded?

3 MR. FILIPOVIC: Well, Your Honor, there's also a
4 motion, the matter is settled against Hassan.

5 THE COURT: What does that have to do with anything?

6 MR. FILIPOVIC: Well, that's just the first part of
7 it. Well, it does if he were still a party, then he would --
8 you can't exclude a party. Hassan is not a party. Chris --
9 there is no cross claims filed by City of Philadelphia, the
10 remaining defendant against Hassan.

11 THE COURT: And is he a fact witness or not?

12 MR. FILIPOVIC: There are no --

13 THE COURT: Was he intimately involved in the events
14 that are in dispute?

15 MR. FILIPOVIC: No, Your Honor. He was not
16 involved. His last involvement was prior to filing of the
17 bankruptcy.

18 THE COURT: And --

19 MR. FILIPOVIC: We Stipulated --

20 THE COURT: -- and --

21 MR. FILIPOVIC: -- to all the other exhibits --

22 THE COURT: Mister, let me just say, I'm denying
23 that motion. That is absolutely ridiculous. First of all,
24 don't ever file a motion-in-limine an hour before a trial.
25 You have wasted my time, my staff time. This is ridiculous.

11

1 Did you find out the City wanted to examine Mr. Hassan?

2 MR. FILIPOVIC: Yes.

3 THE COURT: When did -- that he was wanted to call -
4 - wanted to cross examine him?

5 MR. FILIPOVIC: Three days ago. Three days ago on
6 August 17th.

7 THE COURT: So you're going to wait until the
8 morning of the trial to then file a motion?

9 MR. FILIPOVIC: Well, we prepare the stipulations,
10 Your Honor and the stipulation --

11 THE COURT: Did the city stipulate that Mr. Hassan
12 would not testify, did they agree with that?

13 MR. FILIPOVIC: Well, we wouldn't have filed a
14 motion if they did.

15 THE COURT: Then if they didn't agree to it, the fact
16 that you wait to the morning of a trial and a couple of hours
17 before, is unacceptable.

18 MR. FILIPOVIC: Your Honor, we found out their
19 responses to our stipulation requests --

20 THE COURT: Did you request --

21 MR. FILIPOVIC: -- yesterday at 5:00 --

22 THE COURT: -- on the 17th when they filed this?

23 Did you ask them that they rather -- they intended to proceed
24 with Mr. Hassan as a witness?

25 MR. FILIPOVIC: Well, it was obvious they did

1 because they included him in the witness list.

2 THE COURT: So was it -- so if it was obvious that
3 they did, why didn't you confirm that the stipulation would
4 mean that he no longer has to testify? The fact --

5 MR. FILIPOVIC: Your Honor --

6 THE COURT: -- you waited till the last minute --

7 MR. FILIPOVIC: -- Your Honor --

8 THE COURT: -- counsel, I'm not excluding Mr.
9 Hassan. The fact that the city may want to place the blame on
10 him, that's what people do all the time in trials and unless
11 they --

12 MR. FILIPOVIC: Not without a cross claim, Your
13 Honor. They never filed anything.

14 THE COURT: It doesn't matter that they don't have a
15 cross claim. They don't need a cross claim to -- to list him
16 as a witness. They were entitled to bring any witness that
17 they believe will support their position. A defendant or not,
18 they could have called Mr. Hassan.

19 MR. FILIPOVIC: I understand. But the cause of
20 action against the sole remaining defendant, Your Honor, has
21 no bearing --

22 THE COURT: Counsel --

23 MR. GORMAN: -- on his --

24 THE COURT: -- counsel, it has bearing. He was
25 involved the --

1 MR. FILIPOVIC: Okay.

2 THE COURT: -- and the fact that you tell me he
3 wasn't, doesn't make it so. They are entitled to bring their
4 case, to bring whatever witnesses they want, to support their
5 position, even if Mr. Hassan had not been a defendant in this
6 matter. They would have been entitled to bring him as a
7 witness to the extent they believe he has relevant
8 information. He has relevant information. He was the party
9 from -- based on the pleadings who purchased it. He was the
10 party who obtained a writ of possession -- from the court.

11 MR. FILIPOVIC: We did. We stipulated to that, Your
12 Honor.

13 THE COURT: Well, they can bring him and -- and put
14 whatever evidence they want. The fact that you stipulated to
15 those things does not preclude them from putting whatever else
16 they want to bring and the fact that you somehow think because
17 the --

18 MR. FILIPOVIC: That's fine, Your Honor, we wanted
19 to preserve Court's time. The testimony --

20 THE COURT: No, you wasted my time. You wasted my
21 time. You wasted 45 minutes of my time. You had yesterday to
22 do this. Could have called my courtroom deputy and ask for an
23 emergency hearing yesterday. The fact that you did this this
24 morning now, all you succeeded counsel in doing is annoying
25 the Court. That's all you succeeded in doing. And that's not

1 where you want to be. And trust me I don't make my decisions
2 on the fact that someone annoyed me. But now I'm annoyed.

3 MR. FILIPOVIC: I'm sorry, Your Honor.

4 THE COURT: Counsel, this has been a pattern for you
5 guys in this case. The trial was scheduled last week. Ms.
6 Harper said she had to quarantine because you had a one-day
7 delay, you show up and say, "Oh, my God, we can't proceed."
8 There's always something on the plaintiff's side. And I don't
9 take kindly to this. So I will warn you, consider yourself
10 warned. You have another matter before me and unless it's an
11 absolute emergency and you wait to the last minute, I will be
12 issuing a rule to show cause. As I've said --

13 MR. FILIPOVIC: Yes, Your Honor.

14 THE COURT: -- you have wasted my time, my staff's
15 time, my law clerk's time, all of our time to address a
16 needless last minute motion. Now, I'm not going to beat a
17 dead horse but I think you can consider yourself sufficiently
18 warned. Now --

19 MR. FILIPOVIC: Yes, Your Honor.

20 THE COURT: -- so that's denied. Let's deal with
21 your motion to -- to dismiss Mr. Hassan.

22 MR. FILIPOVIC: Yes, Your Honor.

23 THE COURT: All right. You want to dismiss him as a
24 defendant because the Debtor has settled with him?

25 MR. FILIPOVIC: Correct. Correct, Your Honor.

1 THE COURT: Ms. Harper, why can't they do that?

2 MS. HARPER: Your Honor, the Sheriff's Office sort
3 of got in the middle of this because it had been asked to
4 stipulate to the dismissal of Mr. Hassan, and just from a
5 procedural perspective had some concerns regarding that
6 process. Given the this Sheriff's Office, counsel and myself
7 is aware of a settlement as opposed to just a decision to
8 release all claims against the defendant. So that's how the
9 Sheriff's Office sort of got stuck in the middle was a
10 procedural issue where we were raising and questioning whether
11 that was the appropriate means to proceed.

12 THE COURT: Well, I mean, they can -- they can
13 settle, they can do whatever they want, whether they have to
14 do 9019, whether they need court approval, does the city care?

15 MS. HARPER: Now, the city was being asked to
16 stipulate and that's why the city did not do that. Because
17 what he was being asked to stipulate to didn't notify the
18 Court of a settlement -

19 THE COURT: Right. And you believed that they were
20 required to, they believe you weren't?

21 MS. HARPER: Yes, yes.

22 THE COURT: That's a different issue.

23 MS. HARPER: Yeah.

24 THE COURT: That's a totally different issue -

25 MS. HARPER: And that's --

16

1 THE COURT: -- to stipulate and dismiss Mr. Hassan, I think,
2 you know, right. Absent your -- I guess their position is you
3 didn't have a counterclaim so your consent was not required.
4 And if it wasn't I don't know why they asked you to begin
5 with. That's a whole different issue. They believe you
6 weren't -- where's my rule book at.

7 MR. FILIPOVIC: Well, Your Honor, the rule 41(a)(2)
8 or in Bankruptcy Code 7041(a)(2), simply requires consent of
9 all parties to dismiss a defendant from a lawsuit. However,
10 the case law is very clear that when there is no cross claim,
11 the objecting defendant has no -- can't be prejudiced and so
12 therefore --

13 THE COURT: Well, before on objecting on that basis,
14 counsel, they were objecting saying they weren't signing and
15 that if you wanted approval, go ask the Court. Is that what
16 you did?

17 MR. FILIPOVIC: And we did.

18 THE COURT: And so you did.

19 MR. FILIPOVIC: And we filed it. Yeah.

20 THE COURT: Okay. So you filed that. When was -

21 MS. HARPER: Yeah. And, Your Honor -

22 THE COURT: Wait a minute.

23 MS. HARPER: -- it wasn't -- it was our position
24 that -- the Local Bankruptcy Rule 7041 required notice to the
25 court but --

1 THE COURT: Hold on. Hold on. Let me pull out my
2 Local Rules. What are my local -- what are the Local Rules
3 7041 say? Hold on. 7041, Local Rules. The Local Rules say
4 41 what -- settlement of an adversary proceeding?

5 MS. HARPER: Yes, Your Honor.

6 THE COURT: "Plaintiff shall promptly report
7 settlement of an adversary proceeding to the courtroom deputy.
8 If judicial approval is required or is requested, the 40 shall
9 file a stipulation within 30 days. If they do not timely
10 document the resolution, the court may enter an appropriate
11 order." So when was this matter settled?

12 MR. FILIPOVIC: Your Honor, according to the
13 settlement agreement --

14 THE COURT: Counsel, when was it settled? Don't --

15 MR. FILIPOVIC: It was settled when all parties
16 fulfilled their obligations and covenants within the
17 settlement agreement, that's when that was settled.

18 THE COURT: Counsel, when was the settlement
19 agreement signed?

20 MR. FILIPOVIC: In January, Your Honor. And we
21 reach out --

22 THE COURT: January.

23 MR. FILIPOVIC: Yes, and we reached out to the
24 counsel for Mr. Hassan. I sent him an email on January 29th
25 asking to sign off on a stipulation and to get -- prepared a

18

1 praecipe or whatever is needed to dismiss his client. We also
2 included a covenant that if we need Mr. Hassan to testify, he
3 has to make himself available.

4 THE COURT: Well, that's a covenant in the
5 settlement. I asked -

6 MR. FILIPOVIC: Yes, it is.

7 THE COURT: -- you when it was settled and you're --

8 MR. FILIPOVIC: Well, when he -- well, if you
9 consider it settled when he delivered the funds, which I'm not
10 going to disclose the amounts.

11 THE COURT: No, counsel. It settled --

12 MR. FILIPOVIC: Okay.

13 THE COURT: -- when the terms are reached. You
14 can -

15 MR. FILIPOVIC: The terms are reached --

16 THE COURT: In January.

17 MR. FILIPOVIC: -- in January. And we reached out
18 in January and again in February. We didn't hear back from
19 Mr. Offen until July 13th.

20 THE COURT: Mr. Offen, when did your client sign the
21 settlement? Agreed to --

22 MR. OFFEN: Everything was signed in January, Your
23 Honor. They wanted me -- they filed the suit to dismiss the
24 defendant, they're putting together -- put together something.
25 They were the plaintiff here. Mr. Hassan didn't have any

19

1 cross claims. It made sense for him to settle. It was
2 settled. Made a lot of sense. It was settled. Then they
3 asked me again about putting some -- I see this -- we signed,
4 everything was signed. The settlement stipulation was signed
5 in January. Mr. Hassan did agree to testify. The one thing I
6 warned him is --

7 THE COURT: Well, well, well, I don't know -- want
8 to know. But the point of the matter is --

9 MR. OFFEN: Yes.

10 THE COURT: -- it was settled in January.

11 MR. OFFEN: Yes.

12 MR. DUNNE: Your Honor, if I may?

13 THE COURT: No, nobody may anything. I'm asking the
14 questions here.

15 MR. DUNNE: It was settled July 13th, Your Honor.

16 THE COURT: Mr. Dunne, it was -- it was settled
17 January 13th you said?

18 MR. DUNNE: I emailed your -- the courtroom deputy
19 on August 7th, Eileen --

20 THE COURT: Counsel, when --

21 MR. DUNNE: -- there's a copy of email.

22 THE COURT: -- was it settled?

23 MR. DUNNE: July 13th, Your Honor. There was an
24 email that was sent --

25 THE COURT: Mr. Dunne, both you and your co-counsel

20

1 are avoiding the elephant in the room. You settled this in
2 January.

3 MR. DUNNE: We were waiting for confirmation.

4 THE COURT: Mr., no. It was settled in January. It
5 was signed -- did Mr. Hassan signed this in January? Which
6 means that if he did not comply, he would have been in breach
7 of a settlement. Every settlement has terms and conditions.
8 There's money to be paid, there's actions to be done but it
9 settled and had Mr. Hassan not paid the money that he agreed
10 upon or take the actions that he agreed upon, he would have
11 been in breach of a settlement. So you guys settled this back
12 in January, January.

13 Ms. Godfrey, what was the first time that you hear
14 anything, got any communication from the plaintiff that this
15 matter had been settled.

16 THE CLERK: Judge, I don't even recall that at all.

17 But I'm going to go look at my emails now.

18 MR. DUNNE: It was August 7th, Eileen.

19 THE CLERK: August 7th.

20 THE COURT: So August 7th, a matter that was
21 scheduled to settle in January. January. You didn't report
22 to this Court in August.

23 MR. DUNNE: We received the confirmation --

24 THE COURT: Counsel, you signed the agreement. It
25 was enforceable even if the Debtor had decided I don't want to

21

1 go forward. Mr. Hassan could then say you're in breach.
2 Don't give me this one, well they have things to do. Every
3 dag gone settlement have terms and conditions. You have to
4 make the payment. You have to do whatever you agreed to do,
5 that does not mean it's not settled.

6 So for you to sit here and say, "Oh, well, they have
7 to do all these things." That matter was settled in January
8 and you didn't think it was incumbent to say something to the
9 Court until August? You don't think it was incumbent to tell
10 the city had been settled or maybe --

11 MR. FILIPOVIC: The city knew it had been settled,
12 Your Honor, if I may direct --

13 THE COURT: Do you know, Ms. Harper?

14 MR. FILIPOVIC: I'll tell reflect upon this, Your
15 Honor.

16 THE COURT: I'm asking Ms. Harper. When did you
17 know it was settled?

18 MS. HARPER: I do recall an initial settlement
19 communication that I was copied on but the matter hadn't
20 settled at that point. I think it was in further discussion
21 later on that I had with Mr. Offen where I learned and
22 confirmed that it had been settled.

23 THE COURT: And when was that?

24 MS. HARPER: I actually knew it some point. I mean,
25 it's been many -- so many months, Your Honor, but I think I

1 knew -- did know this at some point over the summer and then
2 recently spoke with Mr. Offen just to confirm again when we're
3 having all this discussion about the stipulation to dismiss,
4 that in fact it been settled.

5 MR. FILIPOVIC: Your Honor -- if I may, Your Honor.
6 If I may just interject here about city's knowledge of the
7 settlement. City on -- on February 6th -- February 6th, city
8 filed a motion for emergency consideration and city in that
9 motion cited Rule 517 that applies to these proceedings --

10 THE COURT: Saying what?

11 MR. FILIPOVIC: Saying that they consulted with all
12 parties, the rule requires for a motion to be considered on
13 expedited basis. Then to consult -

14 THE COURT: What was the issue that they were
15 bringing before me?

16 MR. FILIPOVIC: Well --

17 THE COURT: What's it settlement?

18 MR. FILIPOVIC: -- here it is. Here it is, Your
19 Honor. It was for clarification of your order. But they
20 filed a motion and they said that they consulted with all
21 parties, citing the rule that says, "Shall consult all
22 parties."

23 THE COURT: What does that have to do with anything?

24 MR. FILIPOVIC: It has to do with it, Your Honor, if
25 I may just finish briefly. It has to do with it because in

23

1 their motion, it says that they consulted with the plaintiff.

2 That they knew --

3 THE COURT: And?

4 MR. FILIPOVIC: -- well, they didn't consult with
5 all parties and the rule requires --

6 THE COURT: So what? What does --

7 MR. FILIPOVIC: -- well, so then --

8 THE COURT: -- that have to do with whether you told
9 the Court that this was settled? Don't try to --

10 MR. FILIPOVIC: Your Honor, your question was
11 whether city knew and we're discussing whether city knew.
12 City knew this in February because they only consulted with
13 us.

14 THE COURT: Okay. They knew in February. Why
15 didn't you tell the Court that this was settled? Don't try --

16 MR. FILIPOVIC: Because we didn't hear back from Mr.
17 Offen until July and it was --

18 THE COURT: Was it signed? Counsel, I don't want to
19 hear this nonsense about you didn't hear back from Mr. Offen.
20 Was there a signed settlement agreement?

21 MR. FILIPOVIC: Yes, and it required --

22 THE COURT: I don't care what it required.

23 MR. FILIPOVIC: The Local Rule -- okay.

24 THE COURT: If Mr. Offen's client, Mr. Hassan had
25 not performed, you would have a breach of settlement

1 agreement; nothing else to do with performance. That does not
2 mean that you did not have a settlement agreement. Counsel, I
3 don't know where or what your understanding of a settlement
4 is, but a settlement means that the parties have resolved all
5 of their issues and certain actions are going to be taken.
6 Now, sometimes they agree that you're going to settle and no -
7 - no further actions are required. In this case, you're
8 telling me is the parties agreed to settle, subject to certain
9 conditions subsequent. Was a settlement, under the rules you
10 were required to advise the Court of that settlement. Did the
11 settlement provide that Mr. Hassan would be dismissed from the
12 case, Mr. Offen?

13 MR. OFFEN: Yes, he would be dismissed. He would
14 pay a sum of money and he would be available to testify if
15 necessary.

16 THE COURT: And so those terms were all agreed upon
17 in January when you signed, correct?

18 MR. FILIPOVIC: Yes, they were.

19 THE COURT: When did Mr. Hassan pay the money?

20 MR. FILIPOVIC: In January.

21 THE COURT: Oh, so he had performed and at that
22 point was entitled --

23 MR. FILIPOVIC: He had partially performed.

24 THE COURT: But it doesn't matter. You should have
25 reported that to the Court. You should have then said, "We

25

1 entered into," -- you don't have to tell me the terms because
2 I'm not quite sure whether Court approval is, and I'm not
3 going to address that because that's not before me today.
4 But the bottom line is you knew in January. You knew that you
5 -- Mr. Hassan had agreed to certain terms and conditions,
6 whether he performed them or not, it had been settled. And
7 had --

8 MR. FILIPOVIC: Correct.

9 THE COURT: -- a settlement. Had he breached it,
10 you could have then moved to enforce the settlement. But --

11 MR. FILIPOVIC: I'm in state court, Your Honor. We
12 could -- our only --

13 THE COURT: There was a binding -- that was a
14 binding agreement that obligated Mr. Hassan to take certain
15 actions and the Debtor to take certain actions. Now did the --
16 -- did the agreement say we're not going to dismiss until he
17 performs. Did it said that, Mr. Offen?

18 MR. FILIPOVIC: No, it did not say that.

19 MR. OFFEN: No.

20 MR. FILIPOVIC: Your Honor, but we -- we, if I may?
21 We did not know if he's going to perform until the trial came
22 or we realized that we don't need him as a witness. That's by
23 mere term of the settlement and that is available --

24 THE COURT: But the settlement did not say --

25 MR. FILIPOVIC: -- that's the material term of the

1 agreement.

3 MR. FILIPOVIC: He did not perform.

6 MR. FILIPOVIC: We waited --

17 MR. FILIPOVIC: I understand.

27

1 settlement that had terms. It was settled. The rules say you
2 report the settlement promptly of an adversary proceeding. It
3 was settled with Mr. Hassan, you were required to report that.
4 Now your -- your nonsense about, "Oh, well he had to perform."
5 That's performance. That does not mean it's not settled.
6 So now, Mr. Hassan has agreed to testify. You don't want to
7 call him, that's your option. Doesn't bar the city from doing
8 so. So, where we are right now is I'm allowing Mr. Hassan to
9 be dismissed. If some creditor want to say that you were
10 obligated to report it or get court approval, that's without
11 prejudice to anybody's right to say that you need court
12 approval for that. Because that settlement was only -- I
13 don't even know. I mean, it was in the motion that says, "Oh,
14 we want to dismiss him on an emergency basis." And now you
15 stand here and say, "Well, he had to testify." Well, it's not
16 in agreement because he didn't agree to testify and maybe he
17 wouldn't show up.

18 MR. FILIPOVIC: Well, we realize we don't need his
19 testimony, Your Honor.

20 THE COURT: That makes no sense whatsoever to me,
21 none.

22 MR. FILIPOVIC: Once we realized we didn't need him
23 to testify --

24 THE COURT: It's not. I'm not going to, counsel,
25 I'm telling you.

1 MR. FILIPOVIC: Yes, Your Honor.

2 THE COURT: Go back and review what settlement
3 means, okay?

4 MR. FILIPOVIC: Yes, Your Honor.

5 THE COURT: You need to go back and review because
6 your understanding is unsupported by anything and --

7 MR. FILIPOVIC: Yes, Your Honor.

8 THE COURT: Okay. And I don't mean, and counsel
9 again, you've already annoyed me so I'm going to try to take
10 five and take a breather because as I said, if you wanted to
11 annoy me or any judge, the worst thing to do was file some
12 frivolous motion before -- an hour before a hearing. That's
13 all I'm telling you. That's --

14 MR. FILIPOVIC: I understand, I'm sorry.

15 THE COURT: -- all I'm telling you. So I'm annoyed
16 to begin with and I don't like to be annoyed. I do not. So
17 -- so what we're going to do is, I'm going to put this -- stop
18 the video. You guys can get all your stuff together. And
19 then I'll take a few minutes and then I'll come back and,
20 okay?

21 MR. FILIPOVIC: Thank you.

22 THE COURT: Eileen?

23 THE CLERK: Yes, Judge.

24 (Off the record)

25 THE COURT: Okay. I'm back. Just for the record so

1 that we keep the record straight, the motion to dismiss Mr.
2 Hassan, I think -- I think August 7th, an email was sent to
3 Ms. Godfrey advising that it had been settlement -- settled,
4 and including a July 13th email from Mr. Offen. Also on August
5 6th, the Debtor filed -- Debtor-Plaintiff filed a motion to
6 dismiss Mr. Hassan. An objection to that was filed on August
7 10th. On August 11th, a notice for a hearing on September 8th
8 was filed. August 19th, which was approximately, I guess,
9 eight days later, the Debtor-Plaintiff then filed an expedited
10 motion for consideration.

11 The record will reflect the time period but it was not
12 reported until August 7th. Clearly Mr. Offen had sent
13 something back in July. So the question becomes the court is
14 that it was scheduled for August, a hearing was scheduled for
15 August. It was September 8th, expedited consideration is
16 being asked for today. I said the city, Ms. Harper, can you -
17 - you're not here anymore. Oh, Ms. Harper -- Ms. Harper. Can
18 somebody have Ms. Harper get back on?

19 MR. FILIPOVIC: See if I have her cell phone.

20 THE COURT: No, I'm just going to chat and send her
21 something. We are back on the record. All right.

22 MS. HARPER: My apologies, Your Honor.

23 THE COURT: Okay.

24 MS. HARPER: If I can get a minute to call my
25 witnesses back in. One moment, Your Honor. I apologize for

1 holding up the Court.

3 (Pause in proceeding)

5 THE COURT: Okay. What I was saying, Ms. Harper, is
6 that I was going through in -- in connection with the motion
7 to dismiss Mr. Hassan because the matter has been settled,
8 on August 7th -- August 6th, the Debtor apparently filed a
9 motion to dismiss. On August 7th, he sent an email, or one of
10 the plaintiff's counsel sent an email to Ms. Godfrey advising
11 that the -- it had been settled pursuant to the Local Rules.
12 And so on August 10th, there was an objection filed.
13 Thereafter, Ms. Godfrey contacted Mr. Dunne to say there was
14 an objection filed and please, you know, we need a hearing
15 date. He then on August 11th the next day, scheduled a notice
16 on the motion for September 8th, which would had been in the
17 ordinary course. Approximately, eight days later, Debtor then
18 filed -- Debtor-Plaintiff files and expedited motion for
19 consideration of the motion to dismiss. Oh, my God, it's the
20 doorbell. I'm going to have to go answer that only because if
21 it's a package. No packages are safe these days, so --

23 THE COURT: Okay. I'm back. I apologize for that.
24 Hopefully, we will not have any more interruptions. There not
25 someone and to answer the door and pick up packages. So where

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1 I left off, Ms. Harper, was that the only -- the city has no
2 objection. I mean, this was scheduled for September. It's
3 now before me on an expedited basis. Does the city, other
4 than procedural issues, have any objection to -- I said, I
5 have no issue with granting the motion to dismiss subject to
6 the Debtor, complying with any rules that are necessary, if
7 any, would reach the settlement?

8 MS. HARPER: No, Your Honor. I guess, I don't have
9 an objection to the actual request to dismiss Mr. Hassan, he
10 is here today. He is prepared to participate, you know, and I
11 think the city -- the city views that its ability to have Mr.
12 Hassan testify the same way that Your -- Your Honor does.

13 THE COURT: That's a different issue.

14 MS. HARPER: Yeah. So I -- in reality, no, I don't
15 think the city has concern for the plaintiff agreeing to
16 dismiss his case against Mr. Hassan, that's -- that's their
17 choice.

18 THE COURT: Right. If he wants to dismiss and if
19 there are any obligation with respect to the settlement, if
20 any, the Debtor-Plaintiff will be obligated to comply with
21 those. But I want to make it clear that I am going to grant
22 this motion to dismiss subject to whatever obligations, if
23 any, the Debtor has with respect to needing court approval for
24 same.

25 MS. HARPER: And --

1 THE COURT: Whether he does or doesn't, you can do
2 that subject to whatever obligations he has to do, if any, I
3 don't know.

4 MS. HARPER: I think it's at the court's discretion
5 and that was what -- what the concern was, is that the court
6 hadn't been given an opportunity to exercise its discretion as
7 to whether it wanted documentation of the settlement given
8 the --

9 THE COURT: I may or may not. I don't know. You
10 know, whether the Debtor has an obligation to or not is still
11 whether I dismiss it or not, it's subject -- I'm going to
12 dismiss subject to, and reserving any issue with respect to
13 the terms of the dismissal.

14 MS. HARPER: Does that -- yeah. I don't know. And
15 for clarification's sake, whether that means they had a
16 settlement, an enforceable settlement at this point or not but
17 that's not really my concern. I just --

18 THE COURT: Not mine either. No, it's not my
19 concern. You know, the Debtor wanted to settle, he can
20 settle. If he wanted to settle with the city and proceeded
21 against Mr. Hassan. I don't tell the Debtor what to do. If
22 he wants to, you know, the Debtor believes that their claims
23 are primarily against the Sheriff. It is what it is. That's
24 the (inaudible). If they want to settle for whatever they
25 settled with Mr. Hassan, and at some point, you know if they

1 don't prevail, they get what they got against Mr. Hassan. If
2 they do, they got what they got against Mr. Hassan plus
3 whatever else.

4 All right. I'm going to mute you guys one more
5 second.

6 (Pause in proceeding)

7 THE COURT: All right. All right. So again, with
8 respect to the request to dismiss Mr. Hassan, I will grant the
9 motion subject to the Debtor complying whatever requirements
10 that may be necessary with respect to the settlement and
11 without waiving the court's right to decide whether it needs
12 to review the terms of the settlement. I'm not quite sure why
13 I would get involved. Typically, I don't unless somebody
14 brought something to my attention. The Chapter 13 Trustee may
15 have to take a position, creditors may take a position. I
16 think there aren't that many creditors in this case, are
17 there?

18 MR. FILIPOVIC: No.

19 THE COURT: The city isn't -- the city isn't a
20 creditor, correct?

21 MS. HARPER: Correct, Your Honor. The only other --
22 and if I may, I don't want to overstep my bounds because
23 again, I realize this isn't really my argument to make here,
24 but just to further impress upon the court, the reason why the
25 city was concerned is because we have a plaintiff who is

1 acting through next friend. As well as the fact that it was
2 -- well, I think --

3 THE COURT: Right. Leave it there. I mean, it is
4 what it is. So but I don't want to prejudice anybody's rights
5 and that's all I'm saying. But with respect to the Debtors
6 ability -- Debtor-Plaintiff's ability to -- to settle, that's
7 within their discretion. Whether they need court approval,
8 I'm not deciding today and even if they don't have to, whether
9 it's something that I have the authority to look at if in
10 order to grant the dismissal, it's within my discretion.

11 I'm not quite, you know, some people never mind -- and it
12 has nothing to with do it. I'm not referring to you, Mr.
13 Dunne or to your co-counsel when I say some people don't
14 understand that, {quote}, "authority," had nothing to do with
15 you. Just commenting in general.

16 All right. So Mr. Offen, I can hear you talking with Mr.
17 Hassan while I was on mute regarding his concern to go to --
18 to prayer at 1:00, 1:30.

19 MR. OFFEN: The later mosque, yeah, the earlier ones
20 he said he would be here, not for 12:00, 12:30 but 1:30.
21 There is a mosque near him.

22 THE COURT: And how long does that -- was that hour,
23 hour-and-a-half, Hassan?

24 MR. HASSAN: Yeah. Like one hour, yeah.

25 THE COURT: And how far are you from the mosque?

1 MR. HASSAN: I'm not that far like 15 minutes.

3 Means he is not going to be available till -- if he goes at
4 1:30 he -- at 2:00, he won't be back till 2:45, which means
5 he's not going to be available till about 3:00 p.m.

10 THE COURT: Well, I mean, if he goes to the 12:30,
11 he'll be back by 2 o'clock.

13 THE COURT: That might make more sense. Because we
14 have to hear from all, we can make him the last witness.

18 THE COURT: It's clear the city is.

20 THE COURT: So --

23 THE COURT: So, how long do you think it's going to
24 take for the Debtor's witnesses, Debtor-Plaintiff witnesses?

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1 Barrington Whyte and the two people from the Sheriff's Office
2 that we deposed in this matter. So, maybe subject to cross
3 examination by Ms. Harper, I can't see it taking less than
4 two-three -- two and a half hours to be generous.

5 THE COURT: Okay. So it's -- let's see how much
6 time we've wasted. It's 12 o'clock for a 10:30 hearing. We
7 wasted an hour and a half. All right, which I'm stopping at 5
8 o'clock. If this doesn't finish by 5:00, you guys are going
9 to just come back because we wasted an hour and a half. And
10 I'll take responsibility for at least 15 minutes of those
11 answering doors and taking a time to sort of re-compose.

12 MR. FILIPOVIC: I'll take the responsibility for the
13 motion in limine, Your Honor.

14 THE COURT: It doesn't matter, counsel. We are
15 where we are. You know, I -- it is what it is. I apologize
16 for losing my temper, I should not. It is what it is.

17 MR. FILIPOVIC: No, it's fine, Your Honor.

18 THE COURT: It is what it is. That's my favorite
19 saying, I have to put it back on my -- I have it on my -- on
20 my bench, but I don't have it here. I guess, I should put
21 that on my table, on my desk at home. But in any event,
22 counsel it would probably make sense then for Mr. Hassan to go
23 to the 12 -- I don't know if he's going to make it. It's 12
24 o'clock. He said he's 15 minutes away. So that means he'll
25 be back by 2 o'clock.

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1 MR. OFFEN: Abdeldayem, can you do, make it for the
2 12:30 service today?

3 MR. HASSAN: Yeah. I can be back by 12 o'clock,
4 yeah.

5 THE COURT: Okay.

6 MR. OFFEN: No, no, no. And you can be back by 2
7 o'clock. Can you make it to your service today at the mosque
8 for 12:30 and then be back here for her Honor by 2 o'clock?

9 THE COURT: Well, even if he -

10 MR. HASSAN: Yeah.

11 THE COURT: -- if he is past 2 o'clock.

12 MR. OFFEN: That's fine.

13 THE COURT: You know, 2:00, 2:15. A hearing, two
14 and a half hours for the other witnesses, that takes us to 12,
15 to 1, to 2:30. So be back by 2:30.

16 MR. HASSAN: Okay. That's good.

17 THE COURT: And the city will have their -- their
18 witnesses. Or I'm not quite sure if the city is going to put
19 their case or how -- how they want to proceed? Are they
20 having the same witnesses? Are they going to, you know,
21 reserve the right to then call them in their case-in-chief? I
22 don't know.

23 MS. HARPER: Yeah and I want to be clear that, you
24 know, the city, of course is reserving the right to call Mr.
25 Hassan but -- but may not and is reserving its right to call

1 Mr. Hassan, depends on how things go.

2 THE COURT: Okay. Mr. Hassan, I'm going to --
3 you're going to be allowed to leave. Do not talk with anybody
4 about -- I don't know who you talk to but, you know, don't
5 talk to anybody else about your case other than Mr. Offen and
6 so you can leave and when you get back, sign back in and we'll
7 be able to see that you're back, okay?

8 MR. HASSAN: Okay. Thank you.

9 THE COURT: Thank you, Mr. Hassan. Okay.

10 MR. OFFEN: Your Honor, may I also then be excused
11 on that?

12 THE COURT: Sure.

13 MR. OFFEN: That's fine.

14 THE COURT: I mean, you have no --

15 MR. OFFEN: I'm just here for him. His job today is
16 just tell the truth. That's it. Tell it like --

17 THE COURT: Okay.

18 MR. OFFEN: That's all he's going to be doing.

19 THE COURT: Well, that's what I hope everybody does.
20 That mean, telling the facts are what they are. I can't
21 change the facts. I just take the facts and apply the law to
22 it. It is what it is. All right. With that being said, Mr.
23 Offen you may be excused. Mr. Hassan, Mr. Offen come back
24 around 2:15. Mr. Hassan, 2:15. That gives them more than
25 enough time.

Opening Statement - Mr. Filipovic

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1 MR. OFFEN: Thank you, Judge.

2 THE COURT: Okay.

3 MR. HASSAN: Thank you.

4 THE COURT: All right. Thank you. All right. Who
5 is handling this case for the plaintiff, who's going to speak,
6 you counsel? Okay.

7 MR. FILIPOVIC: Me, Your Honor.

8 THE COURT: Well now, that being said, Ms. Harper,
9 who's going to present for the Sheriff?

10 MS. HARPER: Yes, Your Honor.

11 THE COURT: Who is, you?

12 MS. HARPER: Myself, Your Honor.

13 THE COURT: Okay. So what that means is Mr. Domer,
14 Mr. Dunne, you do not get to say anything, you can consult,
15 you can pass notes, you can do whatever you want, you do not
16 get to argue, you do not get to interject, you don't get to
17 say anything. One counsel, okay.

18 All right. Counsel, you may proceed if you want opening
19 arguments or you want to forego those and get right into the
20 case. You know --

21 MR. FILIPOVIC: I have a brief opening statement,
22 Your Honor.

23 THE COURT: Okay.

24 MR. FILIPOVIC: If I may. May it please the Court.
25 The plaintiff's sole cause of action and trial today is

1 against the Sheriff, City of Philadelphia and it's under
2 Section 362(a) of the Bankruptcy Code, which provides for an
3 automatic stay for certain actions once a petition under the
4 government has been filed. "The automatic stays is imposed by
5 Section 362(a) it prohibits any act to collect or recover a
6 claim against the Debtor arose before commencement of the
7 case. And any act to obtain possession of property of the
8 estate or the property from the estate or to exercise control
9 over the property of the estate," that's 362(a)(3).
10 "Willful violation of the automatic stay gives rise to the
11 damages as set forth in Section 362(k) of the code." Through
12 City's own exhibits, primarily and some of our own, we'll show
13 that there was at least six instances and likely up to nine
14 instances of acts by the Sheriff, and I'll refer to the of
15 Sheriff City of Philadelphia, the named defendant.

16 THE COURT: Well, is the city -- well, is the City
17 of Philadelphia a defendant in this?

18 MR. FILIPOVIC: No, Sheriff of the City of
19 Philadelphia and I'll refer to them as the Sheriff.

20 THE COURT: The Sheriff, not the city? City is not
21 in --

22 MR. FILIPOVIC: No, not the city.

23 THE COURT: -- not in here, okay.

24 MR. FILIPOVIC: Right. I only say the City's
25 exhibits because they're pre-marked them as City 1 through

1 whatever.

2 THE COURT: Okay.

3 MR. FILIPOVIC: And like we said, we'll show at
4 least six and likely up to nine acts by the Sheriff that did
5 exactly that. They sought to obtain possession of property of
6 the estate or the property from the estate and to exercise
7 control of -- of such property.

8 THE COURT: And what property is that?

9 MR. FILIPOVIC: Plaintiff's residence. Plaintiff's
10 primary residence.

11 THE COURT: So basically, well, at the time, the
12 Debtor didn't own it. So they tried to -- he had a right to
13 occupancy. So it's the --

14 MR. FILIPOVIC: Correct.

15 THE COURT: It is right to occupancy that they tried
16 to exercise control over.

17 MR. FILIPOVIC: Correct. Correct, Your Honor.

18 THE COURT: Okay.

19 MR. FILIPOVIC: And plaintiff will show that at
20 least by May 8th, the Sheriff was fully aware the plaintiff
21 had filed for bankruptcy Chapter 13 in this court. And the
22 Sheriff even recorded having received the notice of
23 plaintiff's bankruptcy filings and its own records. We'll do
24 that through our own trial exhibits and through Sheriff's
25 trial exhibits, namely service event report entered by Deputy

1 Taylor on May 10th as City 4, Exhibit C4, as well as the risk
2 -- return of service, Plaintiff's 35.

3 And we will show notice, as well as through Sheriff's
4 responses to discovery, namely admissions, responses to
5 requests for admissions and those of admissions that are done
6 through depositions. Plaintiff had broken up the request for
7 admissions into Exhibits, Plaintiff's 23 through 34, what we
8 will, for the purposes of expediency of the trial, we can just
9 enter them or read them into record as, you know, in bulk.

10 And most importantly, the Sheriff's actions do not
11 only contradict, the bankruptcy code but their own policy and
12 procedure that they have recorded and reduced to writing. In
13 pertinent part, their policy and procedure says, "Bankruptcy,
14 when received by the Sheriff's Office all legal action is to
15 stop." That's Plaintiff's Exhibit 16 and C-26. There's more
16 to it but for purposes of the opening statement, that's as far
17 as I'm going to go today.

18 Plaintiff will also show damages through the testimony of
19 a firsthand witness of such damages, Mr. Barrington Whyte, who
20 is a plaintiff's nephew and a household member who has been
21 and ordered in front of the court, by this court to a specific
22 explicit order, which vested him with explicit authority to
23 testify on Mr. Toppin's behalf.

24 THE COURT: But counsel, let's -- what did you say
25 he would be testifying to regarding when you listed his

1 testimony on the witness list?

2 MR. FILIPOVIC: I will read verbatim of what his
3 test -- he is going to testify about, Barrington Whyte, Your
4 Honor, will be testifying. I'll just read it verbatim. I
5 don't want to misquote myself.

6 THE COURT: Uhm-hum.

7 MR. FILIPOVIC: "Summary of testimony. Will testify
8 regarding plaintiff's residence, relevant financial affairs,
9 bankruptcy filing, the notices to the Sheriff of the
10 bankruptcy filing. Will also relate firsthand knowledge of
11 all the ill effects that the post-bankruptcy notice collection
12 and writ enforcement by the sheriff had on the plaintiff.

13 THE COURT: So he's going to be testifying on his
14 own observations?

15 MR. FILIPOVIC: Correct. His own observation of the
16 plaintiff and of the Sheriff's actions and his condition --

17 THE COURT: Right. Well, so he's not going to -- so
18 was the Debtor going to testify himself regarding the effect
19 upon him?

20 THE COURT: Your Honor, the Debtor is deaf and mute
21 as was noted in the order.

22 THE COURT: Okay. So --

23 THE COURT: So he can't testify. That's why this
24 court --

25 THE COURT: But that's -- counsel, I get what my

1 order says but. But we're going to limit to his personal
2 observation -

3 MR. FILIPOVIC: Correct. Correct.

4 THE COURT: -- to find on behalf of the Debtor. In
5 this case, he's not testifying on behalf of the Debtor with
6 respect to his observations, correct?

7 MR. FILIPOVIC: Well, he's testifying in the
8 capacity of the Debtor and that of his own. He's going to
9 testify -

10 THE COURT: That's not what that says. It says he's
11 going to testify regarding his own personal observations.
12 That's why I'm asking you about it.

13 MR. FILIPOVIC: Yes.

14 THE COURT: His personal -- so I don't want to hear.
15 So he's not testifying on behalf of the Debtor with respect to
16 the damages. He is supporting the Debtor but based on his own
17 personal knowledge. He's not there testifying on what the
18 Debtor would have said. Because that's not what that says.

19 MR. FILIPOVIC: No, he's not to testify on what a
20 Debtor could -- would have said. The Debtor doesn't speak so.

21 THE COURT: Debtor can write --

22 MR. FILIPOVIC: -- his own personal observation.

23 THE COURT: -- I don't know. Does the Debtor know
24 how to write?

25 MR. FILIPOVIC: Well, he is deaf and mute, Your

1 Honor, he does not.

2 THE COURT: That -- that doesn't mean you can't
3 write because you deaf and --

4 MR. FILIPOVIC: You would have to learn to write.

5 THE COURT: Well, he couldn't have counsel, that's
6 why I'm asking the question. Helen Keller was deaf and mute.
7 So she --

8 MR. FILIPOVIC: Yeah, I know.

9 THE COURT: -- could communicate; that was the
10 question. Does he know --

11 MR. FILIPOVIC: Yeah, we're not going to be offering.

12 THE COURT: -- how to communicate? Okay. That --

13 MR. FILIPOVIC: No, very limited -- he's very
14 limited, Your Honor. He's disabled to that regard and --

15 THE COURT: Okay.

16 MR. FILIPOVIC: -- Barrington Whyte will only
17 testify to his observations of his uncle with him. He's lived
18 with him for most of his life.

19 THE COURT: Okay. That's what I want to make it
20 clear that it's only his personal observation. That's it.
21 Okay. And so you believe the damages are going to be based on
22 what Mr. Whyte testifies as to his personal observations of
23 the impact on his -- you said his uncle, right?

24 MR. FILIPOVIC: Yeah, his uncle.

25 THE COURT: His uncle with respect to the receipt of

1 the notices, correct?

2 MR. FILIPOVIC: Correct.

3 THE COURT: Okay. All right.

4 MR. FILIPOVIC: Not the receipt of the notices, but
5 the attempts to evict.

6 THE COURT: Which -- whichever --

7 MR. FILIPOVIC: Well, the notices to evict and --

8 THE COURT: Yeah, the notices to evict. Right.

9 MR. FILIPOVIC: -- the service, yeah, which is
10 separate and apart from notices that were provided to the
11 Sheriff. Just want to make that clear.

12 THE COURT: I'm not talking about that.

13 MR. FILIPOVIC: Okay. Good. Yeah. The notices to
14 evict.

15 THE COURT: What I'm talking about was the -- my
16 understanding that notices were posted.

17 MR. FILIPOVIC: Yes. Notices, orders --

18 THE COURT: And if there was something more than
19 that, you know, I don't know.

20 MR. FILIPOVIC: Yeah.

21 THE COURT: But my understanding was that that
22 notices were posted and that was it. That the --

23 MR. FILIPOVIC: Right. Several notices.

24 THE COURT: -- the mail or something. Yeah, but
25 nothing, no personal interaction, or maybe there was, I don't

1 know.

2 MR. FILIPOVIC: Yeah, those were personally -- we --
3 you will hear a testimony regarding that from Ms. Taylor. She
4 appeared at the residence in person.

5 THE COURT: Right. Counsel, I know that you can't
6 post on the building without personally appearing.

7 MR. FILIPOVIC: Sure.

8 THE COURT: My question is that, Mr. Whyte's
9 testimony is going to be limited to his observation of the
10 notices being posted or some interaction with the Sheriff? I
11 don't know.

12 MR. FILIPOVIC: No interaction with the Sheriff.

13 THE COURT: What I'm saying that was --

14 MR. FILIPOVIC: Yes.

15 THE COURT: -- you know, my understanding there was
16 no interaction other than the posting on the doors or wherever
17 they posted it and maybe mailing it to them. I don't know.
18 But I just -- my understanding was there was no personal
19 interaction in terms of face-to-face conversation other
20 than -

21 MR. FILIPOVIC: That's my understanding as well,
22 Your Honor.

23 THE COURT: So that's all I wanted to be clear.

24 MR. FILIPOVIC: Sure.

25 THE COURT: That's what happened. So that, you know

1 -- and if there was, I'm not saying you can't present
2 testimony, but that's what I'm -- I understood the alleged
3 violations was the actual posting and continuing efforts by
4 posting.

5 MR. FILIPOVIC: He's going to give a little bit of a
6 background about how this whole came about as well, if Your
7 Honor permits. Because it was a matter about --

8 THE COURT: How what came about?

9 MR. FILIPOVIC: Well the, you know, the underlying
10 this -- what was stipulated to the underlying case and why
11 they were at danger of losing their house.

12 THE COURT: Okay. I mean, to the extent you believe
13 that's relevant? I'll let --

14 MR. FILIPOVIC: We believe so.

15 THE COURT: So the objects, I mean, I'm not there
16 yet.

17 MR. FILIPOVIC: Okay.

18 THE COURT: If you think I need some background, it
19 is what it is.

20 MR. FILIPOVIC: I'm just going to lay the
21 foundation.

22 THE COURT: Yeah. Okay. Unless the city stipulates
23 and then I don't have to hear it. Or if they don't, then --
24 or they object, we'll get to that when we get to it. I'm
25 sorry. I interrupted you because I -- I just wanted to be

1 clear. Because I want to --

2 MR. FILIPOVIC: Sure.

3 THE COURT: -- head off at the pass, any idea that,
4 "He's going to do some -- he told -- me or I would." He
5 can't --

6 MR. FILIPOVIC: No, no, no hearsay, Your Honor.

7 THE COURT: Well, he can't because he can't talk.

8 MR. FILIPOVIC: He can't talk, not from him. Yeah,
9 won't have to worry about that.

10 THE COURT: I'm not worried about it. If he could,
11 he would. You know, it is what it is. I can't -- you know, I
12 just simply want to avoid unnecessary delay.

13 MR. FILIPOVIC: Sure.

14 THE COURT: Do you believe that -- so Mr. Whyte's
15 going to testify regarding his observations of the impact of
16 the notices that were received.

17 MR. FILIPOVIC: Served, posted. Yeah.

18 THE COURT: Okay.

19 MR. FILIPOVIC: Correct. All right. And if I may
20 call now, Mr. Whyte, to the stand.

21 THE COURT: Okay. Hold on. Who's administering the
22 oath here?

23 THE CLERK: I will, Judge.

24 THE COURT: Okay.

25 MS. HARPER: Your Honor?

Opening Statement - Ms. Harper

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1 THE COURT: Yes, Ms. Harper?

2 MS. HARPER: Would you like the city to reserve its
3 opening statement for its defense?

4 THE COURT: Oh, I forgot. Why don't you just go
5 ahead and give me your opening statement.

6 MS. HARPER: And I -- and I did it there myself,
7 Your Honor.

8 THE COURT: I noted -- I did write down first,
9 second, and then I got carried away as usual. All right. Ms.
10 Harper, what's the City's opening statement?

11 MS. HARPER: And we're both doing it, Your Honor.
12 I --

13 THE COURT: The Sheriff, the Sheriff. And Sheriff
14 we believe right now, is Ms. Bilal?

15 MS. HARPER: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. HARPER: And I apologize for doing that. And if
18 I do it again, I apologize.

19 THE COURT: And I apologize because you said the
20 city and I went right along with you when it was the Sheriff.
21 I know that's because we all know you typically represent the
22 City of Philadelphia.

23 MS. HARPER: That's right.

24 THE COURT: For the record, it's Ms. Harper and Mr.
25 Domer are here on behalf of the Sheriff of Philadelphia.

1 Well, whoever that name may be. All right. What's your
2 opening statement, Ms. Harper?

3 MS. HARPER: Well, Your Honor, I don't expect the
4 Court's going to learn too much more from a factual
5 perspective than what -- what the court is already aware of.
6 With regard to the --

7 THE COURT: Aware of from prior hearings, not --
8 there's no --

9 MS. HARPER: Right, Your Honor. I'm not suggesting
10 that these are -- these are facts admitted or in evidence or
11 anything like that. But I think the court has a general sense
12 regarding the facts of the case and the allegations against
13 the Civil Enforcement Unit of the Sheriff's Office. As -- on
14 May 8th of 2018, Mr. Abdeldayem Hassan brought a writ of
15 possession against unknown occupants for the property located
16 at 146 South 62nd Street, to the Civil Enforcement Unit of the
17 Sheriff's Office.

18 The Civil Enforcement Unit is tasked by law with the
19 duty to enforce Mr. Hassan's writ of possession. And you'll
20 hear from Captain Sean Thornton, that in fact, the main focus
21 of the Civil Enforcement Unit is to enforce a variety of state
22 court orders. Upon receipt of the writ of possession that was
23 brought by Mr. Hassan, Sergeant then Deputy, Sergeant Jetaria
24 Taylor was assigned to enforce Mr. Hassan's writ of possession
25 against unknown occupants at the property. Sergeant Taylor's

1 testimony will affirm that all allegations of alleged state
2 violations against the Sheriff's Office arise from a lawful
3 enforcement of a facially valid writ of possession, issued by
4 the Court of Common Pleas of Philadelphia.

5 Your Honor, we'll also learn from Captain Thornton
6 that the Civil Enforcement Unit staff are trained to cease
7 enforcement when the unit is notified of a bankruptcy. It's
8 not for purposes of suggesting that this -- this policy or
9 procedure gives a private cause of action to the plaintiff by
10 any means. But it is for purpose of showing that the Sheriff
11 has a policy and procedure in place and evidence will
12 establish that on June 7th, 2018, when the C.E.U. received --
13 pardon me, when the Civil Enforcement Unit received notice of
14 Mr. Toppin's bankruptcy, all enforcement of Mr. Hassan's writ
15 of possession ceased.

16 MR. FILIPOVIC: Your Honor.

17 THE COURT: You do not get to interrupt --

18 MR. FILIPOVIC: I'm sorry.

19 THE COURT: -- her opening.

20 MR. FILIPOVIC: No, I thought she was finished. I'm
21 sorry.

22 THE COURT: Are you not?

23 MS. HARPER: I am, Your Honor.

24 THE COURT: Okay. Let's move on. All right. Now,
25 we'll start the testimony.

1 MR. FILIPOVIC: Your Honor, just before we do that,
2 we did reach some stipulations in this case. And we emailed
3 them to Ms. Godfrey before the trial.

4 THE COURT: Okay. So --

5 MR. FILIPOVIC: It reached her late yesterday
6 afternoon and I can read them into the record, they're not
7 many. Or we can -- you know we --

8 THE COURT: So they are going to be -- there --
9 there's stipulations that will be entered into the record.
10 They can be marked as what? What do you want to mark them as?

11 MR. FILIPOVIC: Well, they're not really evidence.
12 They're stipulations, they can be marked --

13 THE COURT: Well counsel, stipulations can be what's
14 agreed upon by the parties. And those facts are deemed the
15 facts. And the stipulated facts can be entered into the
16 record as opposed to being read into the record. They're -

17 MR. FILIPOVIC: Sure.

18 THE COURT: -- both counsel, are they not?

19 MR. FILIPOVIC: Yes, they are.

20 THE COURT: Right. So these are the stipulated
21 facts that the parties have agreed upon.

22 MR. FILIPOVIC: Correct.

23 THE COURT: Ms. Harper do you think they need --

24 yeah, if you want to read them into the record or do you --

25 MR. FILIPOVIC: I'll read them. I think it's easier

1 if I just read them. I mean they're three sentences or four.

2 THE COURT: Okay.

3 MR. FILIPOVIC: Okay. You'd just want to give me a
4 second here. I apologize.

5 THE COURT: Have they been filed -- you said you
6 sent them. Do we have those, John?

7 THE CLERK: We sent them to Ms. Godfrey this
8 morning.

9 THE COURT: I know --

10 THE CLERK: When they reached --

11 THE COURT: Hold on. John, do you have those?

12 THE CLERK: A stipulations from this morning? The
13 only thing I have from this morning is that motion in limine.
14 I mean, me personally anyway. Is it on the docket or it's
15 just an email?

16 MR. FILIPOVIC: It's not on the docket.

17 THE COURT: Never mind, just read them.

18 THE CLERK: Okay. Okay.

19 MR. FILIPOVIC: Sure. One second, Your Honor. I'm
20 sorry. Okay. Here we go.

21 THE COURT: Can you just share them on the screen?
22 Do you know how to do that? That's what I was talking about.

23 MR. FILIPOVIC: I'm afraid I'm going to lose that.

24 But here they are, Your -- Your Honor, if I may. "It is
25 hereby stipulated and agreed among parties, the Sheriff of the

1 City of Philadelphia and Plaintiff Lyndel Toppin, that the
2 following facts have been stipulated to and are conclusively
3 established for purposes of trial. A) Abdeldayem Hassan filed
4 a complaint and ejectment against, {quote}{unquote} "unknown
5 occupants" pertaining to the 146th South 62nd Street,
6 Philadelphia, in the Court of Common Pleas, January in 2018,
7 docketed as 003400. That was Plaintiff's Exhibit 2 hereby.
8 B) The Abdeldayem Hassan procured a judgment by default for
9 possession which was entered against unknown occupants at the
10 property. The same property on 146th South 62nd Street on
11 April 5th, 2018, in the Philadelphia Court of Common Pleas.
12 C) Abdeldayem Hassan procured a writ of possession against,
13 {quote}{unquote} "unknown occupants" on May 7th, 2018.
14 D) On May 8th, 2018, Plaintiff Lyndel Toppin filed a Chapter
15 13 bankruptcy in the Eastern District, Pennsylvania Bankruptcy
16 Court, that would be this court." That's the end of the
17 stipulations, Your Honor.

18 THE COURT: So the writ of possession was issued
19 when?

20 MR. FILIPOVIC: On May 7th, 2018.

21 THE COURT: And the petition was filed on May 8th?

22 MR. FILIPOVIC: Petition was filed on May 8th,
23 correct.

24 THE COURT: Okay. Okay.

25 MR. FILIPOVIC: All right. Thank you.

1 THE COURT: And what -- that was 2018, right?

2 MR. FILIPOVIC: Yes. 2018.

3 THE COURT: Okay. All right.

4 MR. FILIPOVIC: The plaintiff will now like to call

5 Mr. Whyte to the stand. Mr. Barrington Whyte.

6 THE COURT: Okay. All right. Swear him in.

7 BARRINGTON WHYTE, PLAINTIFF'S WITNESS, SWORN

8 THE CLERK: Okay.

9 THE COURT: Counsel. Where's Mr. Dunne?

10 MR. DUNNE: I'm right beside Mr. Whyte, Your Honor.

11 THE COURT: Okay. I want to see you. Don't --

12 MR. DUNNE: Okay.

13 THE COURT: No, no, no, no. I want you in the

14 picture.

15 MR. DUNNE: No problem.

16 THE COURT: All right. There we go. All right.

17 MR. FILIPOVIC: Okay.

18 THE CLERK: Your Honor, usually, I would ask for the

19 witness to state and spell the name for the record.

20 MR. FILIPOVIC: That's what I was going to ask.

21 THE CLERK: Yeah.

22 MR. FILIPOVIC: Go ahead. And state and spell your

23 -- right.

24 THE COURT: That's the job of the ESR, will swear

25 him in.

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1 MR. FILIPOVIC: Sure.

2 THE COURT: Okay?

3 THE CLERK: And Mr. Whyte, could you please state
4 and spell your name for the record?

5 MR. WHYTE: Barrington Whyte, first name B-A-R-R-I-
6 N-G-T-O-N, my last name's White, W-H-Y-T-E.

7 THE CLERK: And if you could please state your
8 address for the record?

9 MR. WHYTE: 146 South 62nd Street, Philadelphia PA,
10 19139.

11 THE CLERK: Thank you very much.

12 DIRECT EXAMINATION

13 BY MR. FILIPOVIC:

14 Q. Mr. Whyte. Good afternoon.

15 THE COURT: Wait a minute, we got to swear him in.

16 MR. FILIPOVIC: I'm sorry. I thought that already
17 happened. Go ahead.

18 THE COURT: Did he say, did I -- maybe I didn't hear
19 it but, "The truth, that the testimony you're about to give,"
20 did I miss that?

21 THE CLERK: Yes, Your Honor. I did --

22 MR. FILIPOVIC: Yeah, you did.

23 THE CLERK: I did state it, but we could repeat.

24 THE COURT: Oh, my God. All right, I missed it.

25 Never mind. I was busy writing. Okay.

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1 MR. FILIPOVIC: That's fine.

2 THE COURT: All right, go ahead.

3 DIRECT EXAMINATION (CONT'D)

4 BY MR. FILIPOVIC:

5 Q. Mr. Whyte, good morning or good afternoon now. Could you
6 please repeat your current address for the court?

7 A. 146 South 62nd Street, Philadelphia, Pennsylvania, 19139.

8 THE COURT: Is that 52 or 62?

9 A. 146. 146 South 62nd, 62.

10 THE COURT: 62. Okay. I have 52nd. Okay. 62nd
11 Street.

12 A. Yeah. 62nd.

13 THE COURT: Okay.

14 BY MR. FILIPOVIC:

15 Q. And how long have you lived there, Mr. Whyte?

16 A. I've been there about 10 years.

17 Q. And so in the period between 2017, '18 and '19, is that
18 where you resided?

19 A. Yes.

20 Q. And who do you live with -- live there with?

21 A. My uncle Lyndel Toppin.

22 Q. And your uncle, is he a fully functioning individual?

23 Does he have any limitations?

24 A. Yes, he can't -- he can't hear or talk.

25 Q. Okay. And is that the reason you're -- he's not

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1 testifying for himself today?

2 A. Yes.

3 Q. Okay. And now, did this court allow you to testify on his
4 behalf?

5 A. Yes.

6 Q. Okay. Now, about his limitations, other than what you
7 stated. Is he otherwise functional? Does he work for a
8 living?

9 A. Yes, he does. He works.

10 Q. Where does he work?

11 A. He works at a restaurant of the name of Au Bon Pain, if
12 I'm pronouncing it correctly.

13 Q. Okay. And does he work full or part-time?

14 A. Part-time.

15 Q. About how many hours a week?

16 A. I would say he works like 20 hours a week.

17 Q. Okay. And what, if anything, do you do for your uncle?

18 A. Well, basically, I cook for him and I pay the utility
19 bills and things for the house.

20 Q. And did you ever have any issue with utilities at the
21 house?

22 A. Yes. Recently the water just got cut off.

23 Q. When you say recently, how long ago was that?

24 A. Well, it fully stopped working about two weeks ago
25 actually.

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1 Q. Did you make all the -- do you know why that happened?

2 Did you make all the payments?

3 MS. HARPER: Objection, Your Honor, as to relevance.

4 THE COURT: Counsel, relevancy?

5 MR. FILIPOVIC: Well, we're trying to establish more
6 about the residence and --

7 THE COURT: That's post-bankruptcy. What does that
8 have to do --

9 MR. FILIPOVIC: Post-bankruptcy, right.

10 THE COURT: What does that have to do with the
11 Sheriff, and their alleged violation of the state? What does
12 that have to do with anything? He pays the bills, the water
13 was shut off. What am I going to do with that information?
14 How is that going to help me decide this?

15 MR. FILIPOVIC: Okay. Well --

16 THE COURT: Sustained, irrelevant.

17 MR. FILIPOVIC: -- if I may defer that her testimony
18 will reveal that there was really almost a vindictive action
19 by --

20 THE COURT: Counsel.

21 MR. FILIPOVIC: -- if there was no reason. He tried
22 to pay the water --

23 THE COURT: Did you allege anything about
24 vindictiveness or retaliation by the Sheriff?

25 MR. FILIPOVIC: No, this occurred just recently,

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1 Your Honor.

2 THE COURT: So what does and --

3 MR. FILIPOVIC: It's okay. We can skip over that,

4 Your Honor.

5 THE COURT: The last time, and the Sheriff

6 doesn't -

7 MR. FILIPOVIC: We can skip over that.

8 THE COURT: Okay. The Sheriff doesn't have anything

9 to do with the water. That's the city.

10 MR. FILIPOVIC: Okay.

11 BY MR. FILIPOVIC:

12 Q. Other than the water, other than the water bill, did -- do

13 you pay any -- were there any other bills in the house that

14 you pay?

15 A. Besides the water bill, I was -- I was dealing with the

16 GBR Loan Company, a collection agency for the City. And they

17 were, that's the only other bill that, you know, besides the

18 water, that was kind of like a problem.

19 Q. Okay. And can you tell what -- what was the problem? Is

20 that the municipal tax bill?

21 MS. HARPER: Objection again, Your Honor, relevance.

22 MR. FILIPOVIC: Well, Your Honor, this is directly

23 why the bankruptcy was filed and why the property was sought

24 to be sold. We're trying to get background as to why there's

25 a situation to force them to file a bankruptcy to begin with.

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1 THE COURT: Ms. Harper?

9 THE COURT: I'll allow it for what it's worth. If
10 he wants to, you know, he's getting two and a half hours,
11 that's it. He wants to waste his time on matters that are not
12 going to help me resolve the issue, we know they filed. We
13 know there was a Sheriff's sale of the property -- how the
14 heck Mr. Hassan got it. It is what it is. But if he wants to
15 put it, I'll allow it for what it's worth. It's not going to
16 -- I mean, the whole idea is I need you guys to give me
17 testimony and facts that will help me decide the issue. You
18 can spend your time on how you feel if you think that's
19 relevant. I don't know how you think that's going to help me,
20 I already know what I -- I mean you guys in all the pleadings
21 have told me what happened. It got sold as Sheriff's sale for
22 taxes.

24 THE COURT: What else I can tell you.

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1 it. Then I will ask it, Your Honor.

2 THE COURT: All right.

3 BY MR. FILIPOVIC:

4 Q. Again, Mr. Whyte, could you please tell the court more
5 about the -- how the tax issue arose and what you did in
6 connection with it, if anything?

7 A. Well, I was going down to the GBR loan place, collectors
8 for the taxes, I was making my money payments, you know, on
9 time every time down there. And one particular day when I
10 went down there, I had Lyndel with me, Lyndel Toppin, my
11 uncle. I had him with me and one of the workers that was
12 there noticed that, you know, he was disabled, he couldn't
13 talk, you know, or hear. And what she stated to me was that
14 she could, you know, help out our situation.

15 MS. HARPER: Objection, Your Honor. This is
16 hearsay.

17 THE COURT: Counsel?

18 MR. FILIPOVIC: You have to -- you -- you can't tell
19 me what she said to you, Lyndel.

20 THE COURT: Sustained. Hearsay. And counsel, I'm
21 not quite sure, you know, although I said I'm going to allow
22 it for what it's worth. I don't know what it has to do with
23 what the Sheriff's allegedly done. I said I would allow it,
24 but you could get to the point of how this has anything to do
25 with the Sheriff's actions. You know, I don't --

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1 MR. FILIPOVIC: Okay.

2 THE COURT: -- GRBD and whatever they did. They --
3 if they got a claim against GRB or the city, take it up with
4 them.

5 MR. FILIPOVIC: Sure. Okay.

6 THE COURT: This would better just be, "We went,
7 this is what happened, it got filed, it got sold." I don't
8 need to hear anything about some bad action on somebody else's
9 part if that's the road you're going down. I'm just --

10 MR. FILIPOVIC: Okay.

11 THE COURT: -- heads up. All right, go ahead.

12 BY MR. FILIPOVIC:

13 Q. After your visit to GBR, and let's not talk about, you
14 know, anything that was said by GBR to you. What happened
15 next?

16 A. After that, I just received the letter that I was being
17 put out of my home.

18 Q. And who was that letter from?

19 A. The Sheriff's Department.

20 Q. Okay. And what did you do then?

21 A. Well, that time I seeked out a lawyer, which was Mr. Dunne
22 that I wound up finding.

23 Q. And what was done then, if anything, what was --

24 A. Can you repeat the question?

25 Q. What happened next?

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1 A. Well, then after that, we -- he looked into the case and
2 we filed the bankruptcy or the Chapter 13.

3 Q. Okay. Do you know if anyone was notified of the
4 bankruptcy in this case?

5 A. Well, from my knowledge of the bankruptcy, I was just
6 assuming anybody that he owes money to, or you know, as far as
7 like the house and things like that.

8 Q. Okay. And once the bankruptcy was filed, did that -- did
9 you receive any other notices? Was there anything -- did you
10 have any -- did -- did -- did the letters stop? Did the
11 notices stop?

12 A. No, I had a -- a few more after that.

13 Q. Okay. When you say a few more, can you elaborate on that?

14 A. Like three.

15 Q. Okay.

16 A. Three.

17 Q. Okay. Did you see? Where did you find, how did you learn
18 about the notices?

19 A. Well, I saw the notice --

20 THE COURT: What notices? He said he --

21 MR. FILIPOVIC: Well, he said --

22 THE COURT: -- more notices, what notices?

23 MR. FILIPOVIC: Okay. Yeah, that's -- please answer
24 Judge has asked you, what were the notices?

25 THE COURT: He just said he got few notices after

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1 the filing. What notices?

2 A. The notice to --

3 MR. FILIPOVIC: Yeah, what --

4 A. -- get out of the home.

5 THE COURT: Okay.

6 A. We had to vacate.

7 BY MR. FILIPOVIC:

8 Q. Okay. And where did you see these notices?

9 A. Well, they were inside my home at the time when I got
10 home.

11 Q. Were they all inside your house?

12 A. Yes.

13 Q. And who were they directed to?

14 A. Lyndel Toppin. And well, from what the letter said
15 basically everyone in, you know, that household from how it
16 described on the paper.

17 Q. Everyone in the household?

18 A. Yes.

19 Q. Okay. Were all the notices inside your household or --

20 MS. HARPER: Objection. Asked and answered.

21 MR. FILIPOVIC: Okay. We'll move on.

22 BY MR. FILIPOVIC:

23 Q. And you've already said that it -- it was pertaining to
24 all the members in the household, correct?

25 A. Yes.

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1 Q. And you lived at the household?

2 A. Yes.

3 Q. So they pertained to you as well as your uncle, correct?

4 MS. HARPER: Objection, leading.

5 BY MR. FILIPOVIC:

6 Q. What do the notices pertain to? Withdrawn.

7 A. Well, it stated everyone just under basically that roof of
8 the household.

9 MR. FILIPOVIC: Okay. At this point, Your Honor,
10 I'd like to -- to direct the court's attention to the exhibit
11 that was pre-marked as C-14, it's City 14.

12 THE COURT: Can you put that up on the -- thank you,
13 John. Okay, C-14. Okay.

14 (City's Exhibit-14 previously marked for identification)

15 BY MR. FILIPOVIC:

16 Q. Mr. Whyte, I'm going to direct you to what is now featured
17 at the screen. Is that one of the notices that you saw?
18 Have you seen that before?

19 A. Yes.

20 Q. And is that one of the notices that you saw at the house?

21 A. Yes.

22 Q. Okay. And tell me, did the -- do you know if your uncle
23 saw any of these notices?

24 MS. HARPER: Objection. Objection to form. Calls
25 for speculation.

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1 BY MR. FILIPOVIC:

2 Q. Okay. Did anyone else in the house see these notices?

3 A. No, it's just me and my uncle that lives there.

4 Q. Right. But besides you? So you --

5 MS. HARPER: Again, objection, calls for
6 speculation.

7 MR. FILIPOVIC: Well, I don't see how that -- I'm
8 only asking who else saw the notice.

9 THE COURT: You assuming someone else saw it?

10 MR. FILIPOVIC: Well, I'm asking, did anyone else
11 besides yourself or Mr. Whyte --

12 THE COURT: You didn't say that.

13 MR. FILIPOVIC: Okay.

14 THE COURT: So that's the question counsel you --

15 A. Just my -- my uncle.

16 THE COURT: Okay.

17 MR. FILIPOVIC: Right.

18 BY MR. FILIPOVIC:

19 Q. Right. So, let me just -- did anyone else besides you
20 see that notice that's now marked as C-14?

21 A. Just my uncle.

22 Q. Okay. And how do you know that he saw it?

23 A. They were in the house.

24 Q. Okay. What did you -- was that the only notice? Was C-
25 14 only notice?

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1 A. No, there were plenty other notices.

2 MR. FILIPOVIC: Okay. At this time, Your Honor, I'd
3 like to move to admit C-14 into evidence as being
4 authenticated by the addressee, Mr. Whyte, who is an occupant
5 of the house that the notice was addressed to.

6 MS. HARPER: The Sheriff objects, Your Honor.

7 THE COURT: And basis for objection?

8 MS. HARPER: Your Honor, there is -- the document
9 hasn't he document hasn't been authenticated. There is
10 handwriting that is not -- that is not original to the
11 document and --

12 MR. FILIPOVIC: Well, that's not been in the
13 evidence. I don't know -- well, Your Honor, we can have them
14 authenticated --

15 THE COURT: Well, well. She --

16 MR. FILIPOVIC: I'm sorry.

17 THE COURT: She needs to finish. She says that you
18 are -- it's not authenticated because, first of all, it's the
19 City's evidence.

20 MR. FILIPOVIC: But it's addressed to -

21 THE COURT: It could be addressed, is it the
22 specific one he received? He said he saw one like that. I
23 don't know if his -

24 MR. FILIPOVIC: Yeah. He saw that exact notice. He
25 said that was the notice he saw.

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1 THE COURT: He said he saw one like that. He didn't
2 say exact, counsel. I wrote my note -- my notes out.

3 MR. FILIPOVIC: Okay.

4 BY MR. FILIPOVIC:

5 Q. Mr. Whyte, is this -- is this -

6 THE COURT: Wait, whoa, whoa, whoa, You moved to
7 admit it into evidence. Ms. Harper has objected. I gotta
8 rule on that before you start moving on.

9 MR. FILIPOVIC: Sure.

10 THE COURT: Ms. Harper, what's the basis for your
11 objection?

12 MS. HARPER: There is a lack of foundation.
13 Document has not been authenticated yet.

14 THE COURT: All right. Counsel, now you get to lay
15 a foundation on how to authenticate it. So I'm going to
16 sustain.

17 (Pause by The Court)

18 THE COURT: What happened? Sustain the objection
19 and allow you to try to authenticate it.

20 MR. FILIPOVIC: Okay. Sure.

21 BY MR. FILIPOVIC:

22 Q. Mr. Whyte, please refer your attention back to the
23 screen where you see Exhibit C-14. Can you recall as you sit
24 here today, was that the exact notice that you saw, one of
25 the exact notices that you saw in your house?

Whyte - Direct

1 MS. HARPER: Objection to form.

3 MR. FILIPOVIC: Your Honor, that is -- I don't know
4 what she means by the form. I'm asking if that's the notice.
5 Is that a leading question? If she says that it's a leading
6 question, that's another thing. But objection to form in and
7 of itself is --

9 MR. FILIPOVIC: -- too vague for me to -- too vague,
10 I mean is it a compound question? What's -- there's
11 something wrong with --

14 MR. FILIPOVIC: Okay. Miss, he's saying he doesn't
15 understand your objection.

19 MR. FILIPOVIC: What facts exactly haven't been
20 established? He said that he saw this notice and I'm
21 asking -

23 MR. FILIPOVIC: -- is that the exact -

Whyte - Direct

1 BY MR. FILIPOVIC:

6 A. Yes.

8 MR. FILIPOVIC: And again, Your Honor, him being --
9 I'm going to move to admit it again as physical evidence
10 capable of being authenticated. This time, I spoke to the
11 addressee. He lives at the house. He says that he saw this
12 exact notice at the house. And so it's as if it was a letter
13 addressed to him. He's the addressee, he can authenticate
14 that.

18 MS. HARPER: That is one of my objections, I can
19 just object as to authentication because this isn't -

23 THE COURT: I can -- counsel, it's the -- is he
24 saying that that was on there? 5/18/18?

Whyte - Direct

1 don't -

4 MR. FILIPOVIC: Well, no, he's saying that.

10 MR. FILIPOVIC: Okay.

13 MR. FILIPOVIC: Okay.

15 Q. Okay. Other than City-14, is this the exact notice that
16 was on there? It was this handwriting that you see in the
17 bottom right -- left corner, was that on there?

20 Q. Okay. And do you know how that date came about to be on
21 that notice?

24 MR. FILIPOVIC: Okay. Your Honor, I think we've
25 established the issue with the handwriting has been
26 addressed. Ms. Harper --

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1 THE COURT: And so that we wrote this document. So
2 this is a document that was produced by the plaintiffs and
3 given to the City.

4 MR. FILIPOVIC: No, this document was produced by
5 the city as a trial exhibit, Your Honor, in connection --
6 both parties produced this document. They're the same
7 documents. We have combined exhibits.

8 THE COURT: So you produced -- this is what I'm
9 trying to figure out. The plaintiff produced this document
10 to the city and the city has marked it as City-14.

11 MS. HARPER: That's correct, Your Honor.

12 THE COURT: So the plaintiff gave you this with that
13 date on it?

14 MS. HARRIS: The plaintiff produced the document
15 with the date on the bottom left corner. Yes, Your Honor.

16 THE COURT: Okay. All right.

17 MR. FILIPOVIC: We've established that you wrote --
18 that Mr. --

19 THE COURT: So even though this is -- so even though
20 it's marked as City-14, this is really the plaintiff's
21 document that the plaintiff produced, correct?

22 MR. FILIPOVIC: Well, the plaintiff produced it, but
23 it's not the plaintiff's document. It's the city who created
24 this document, and we can --

25 THE COURT: Counsel, counsel, we're not going to

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1 play semantics about who produced -- who wrote it, who
2 didn't. The bottomline is that this document was something
3 with the addition, because the plaintiff's nephew wrote on it
4 and you produced it and gave it to the city with the
5 alterations. Is that the -- that's what I'm trying to figure
6 out.

7 MR. FILIPOVIC: Yes, Your Honor. Yes, Your Honor.

8 THE COURT: All right. Okay. All right.

9 MR. FILIPOVIC: Yes, Your Honor.

10 THE COURT: Although it's marked as City-14, it was
11 actually a document produced by the plaintiff to the city
12 with the 5/18/18 written on it; is that correct?

13 MR. FILIPOVIC: That is correct, Your Honor.

14 THE COURT: Okay. All right, Ms. Harper. Any other
15 objections as to why he hasn't authenticated as a document he
16 received and upon which he wrote on?

17 MS. HARPER: No, Your Honor. This is a document --
18 no, Your Honor. I'll leave it at that.

19 THE COURT: Okay. All right.

20 BY MR. FILIPOVIC:

21 Q. And at this point, let me ask this, Mr. Whyte, why did
22 you write that particular, it appears to be a date. Why did
23 you write that date on there?

24 MS. HARPER: Objection, because that's been asked
25 and answered.

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1 BY MR. FILIPOVIC:

2 Q. Mr. White, do you believe --

3 THE COURT: Whoa, whoa, whoa.

4 MR. FILIPOVIC: Withdrawn.

5 THE COURT: Asked and answered, respond.

6 MR. FILIPOVIC: Well, she is correct. He did --

7 I'll withdraw the question, Your Honor.

8 THE COURT: All right. Then move on.

9 MR. FILIPOVIC: Yeah. He said that he wrote it for
10 his memory.

11 BY MR. FILIPOVIC:

12 Q. Mr. Whyte, why did you write that -- those exact set of
13 numbers on this document?

14 A. So I would remember.

15 Q. Remember --

16 THE COURT: He already said that.

17 MR. FILIPOVIC: Correct.

18 THE COURT: He already said that.

19 BY MR. FILIPOVIC:

20 Q. Remember what? Remember what, Mr. Whyte?

21 A. The date I received it.

22 Q. Thank you. So this -- you wrote this as a date when you
23 received it, correct?

24 A. Yes.

25 Q. Okay, thank you.

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1 MR. FILIPOVIC: So at this point, Your Honor, we
2 would like to -- the plaintiff moves to admit this document
3 as having been authenticated by the plaintiff, who is the
4 addressee of the document.

5 THE COURT: Ms. Harper?

6 MS. HARPER: Your Honor, the city will allow the
7 document to be admitted at this point. Okay.

8 THE COURT: Being admitted, as the debtor said he --
9 I mean, the debtor's representative and Mr. Whyte, who is
10 testifying, I guess, on his own knowledge. This is, you
11 know, his knowledge that it says what it says. And he said
12 he received it, he produced, and he wrote on it. He wrote
13 the date on it. Okay. All right. It's admitted.

14 (City's Exhibit-14 admitted into evidence)

15 MR. FILIPOVIC: All right. Thank you.

16 BY MR. FILIPOVIC:

17 Q. Mr. White, at this point, I'd like to direct your
18 attention to the document that's been pre-marked as C-15, if
19 we can put that up on the screen. And I am going to -- Mr.
20 Whyte, do you see that document?

21 (City's Exhibit-15 previously marked for identification)

22 A. Yes.

23 Q. I'm going to ask you the same questions. Have you seen
24 it before?

25 A. Yes, I have.

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1 Q. And what is it? Can you tell the court what that
2 document is?

3 A. It's a letter to -- for me to vacate the premises, the
4 property.

5 Q. Okay. Does it have the same -- is that the same letter
6 that we saw at City-14 or is it a different -- is it a copy
7 of the same letter or is it two different notices?

8 A. It's the same notice, yes.

9 Q. Okay. But, Mr. Whyte, there is also a handwritten --
10 what appears to be a handwritten notation on there, correct?

11 A. Yes, correct.

12 Q. Okay. So it appears to have a different date on there,
13 correct?

14 A. Yes, correct.

15 Q. Okay. So why did you put that particular date on there,
16 Mr. Whyte, and not --

17 MS. HARPER: Objection. Assuming facts not in
18 evidence yet.

19 BY MR. FILIPOVIC:

20 Q. Okay. Mr. Whyte, did you write -- withdrawn. Mr. Whyte,
21 did you put that notation on the document?

22 A. The date down there?

23 Q. Yes.

24 A. Yes, I did.

25 Q. And why did you put that particular date down there?

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1 A. So I would remember what date -- the day it came in.

2 Q. Okay. So that notice came in on a different, later date
3 than the first notice we talked about here today?

4 A. Yes.

5 Q. Correct. Okay.

6 MR. FILIPOVIC: Your Honor, same procedure. I would
7 like to move to admit this document into evidence. It's been
8 marked as City-15, having been authenticated by the
9 addressee, who admitted that he put the date.

10 THE COURT: Ms. Harper?

11 MS. HARPER: Your Honor, I -- this is going to be an
12 awfully long hearing.

13 MR. FILIPOVIC: Well, there's only four more
14 notices.

15 THE COURT: Whoa, whoa, whoa, Ms. Harper is talking.

16 MS. HARPER: I'm going to continue to object to the
17 plaintiff's ability to authenticate a document that he did
18 not create and has not testified as to --

19 THE COURT: He's authenticating that that's what he
20 received. That's it.

21 MR. FILIPOVIC: Yeah.

22 THE COURT: Then he marked it up. That's it.

23 MS. HARPER: Correct.

24 THE COURT: That's -- it's there for that purpose.

25 I guess you're not going to stipulate that -- I mean --

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1 MR. FILIPOVIC: We asked for that --

2 MS. HARPER: No, Your Honor.

3 MR. FILIPOVIC: Sorry, Your Honor.

4 THE COURT: Well, they didn't and it is what it is.

5 All right, Ms. Harper. Other than the creation of the

6 document was the debtor, which is -- all he's saying is he

7 received it and when he received it, he wrote on it. That's

8 only for the purpose, "That's what I received."

9 MS. HARPER: Uh-huh.

10 THE COURT: "This is what I have in my records."

11 MS. HARPER: Uhm-hum.

12 THE COURT: Object on any other basis?

13 MS. HARPER: Pardon me?

14 THE COURT: Do you object on any other basis?

15 Debtor received that's what he received, and he wrote on it.

16 Okay? That's what the purpose is. He received it. "This is

17 what I have, and I wrote on the date that I received it."

18 Any other basis for objection?

19 MS. HARPER: Well, Your Honor. No, Your Honor, the

20 lack of authentication is my basis for the objection.

21 THE COURT: If your objection is that he didn't

22 create it, we know he didn't create it.

23 MS. HARPER: Yes, Your Honor.

24 THE COURT: Any other business record? This is

25 records that he kept in his --

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1 MS. HARPER: Right. I mean, he hasn't authenticated
2 -- he hasn't laid a foundation that this is a record -- it's
3 all tied together.

4 Again, this is going to make the hearing very long, but
5 he hasn't laid a foundation that this is a record that he
6 keeps in the ordinary course of his daily life or business,
7 and so it's not a business record. It's not a business
8 record created by the plaintiff.

9 MR. FILIPOVIC: Your Honor, if I may respond?

10 THE COURT: Uhm-hum.

11 MR. FILIPOVIC: Ms. Harper ended up having no
12 objection to the prior notice, which was City-14.

13 THE COURT: She had an objection. I overruled it,
14 counsel.

15 MR. FILIPOVIC: Correct. So we're talking about the
16 same exact type of document, and the same rationale should
17 apply. Further, this is not being admitted as a business
18 record. It's being admitted as physical evidence, capable if
19 authenticated by either the party who created it or the
20 addressee who received it. And we're admitting it at this
21 time with testimony from Mr. Whyte, who has firsthand
22 knowledge that he received it in his house.

23 THE COURT: So what rule are you -- what federal
24 rule of evidence you're relying on. Let's go to the rules of
25 evidence, since we're going to be talking about physical

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1 evidence. What rule are you -- what federal rule are you
2 relying on?

3 MR. FILIPOVIC: Sure. Just one second, Your Honor.
4 901, Your Honor.

5 THE COURT: Okay. I'm already there. Okay.

6 MR. FILIPOVIC: Okay. And this is for
7 authentication of evidence. Testimony of witness with
8 knowledge that the item is what it claims to be 901(a)(1).

9 THE COURT: (B)(1)?

10 MR. FILIPOVIC: No. Yeah, (b)(1).

11 THE COURT: (B)(1). Ms. Harper, authentication or
12 identifying evidence. The following are examples only, but
13 not a complete list, of evidence that satisfy the requirement
14 of 901(a), which is that testimony that an item is what it is
15 claimed to be.

16 MS. HARPER: Okay. Well, the document --

17 THE COURT: Is what it's claimed to be. It's
18 claimed to be the notice that he received.

19 MS. HARPER: Okay. Your Honor, but -- okay. Just
20 it's not necessarily the notice that was prepared by the
21 sheriff then. And this -- I mean, that's --

22 THE COURT: All that it is offered for is this is
23 what he said he received. That's it.

24 MS. HARPER: Okay, Your Honor.

25 THE COURT: That's it. Only that this is what he

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1 says he got.

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1 THE COURT: She doesn't have to stipulate to
2 anything.

3 MR. FILIPOVIC: All right. Then we'll go one at a
4 time.

5 THE COURT: No, you can ask to rely on the -- never
6 mind.

7 MS. HARPER: Your Honor, at this point, we have no
8 testimony regarding -- no testimony regarding these
9 additional documents at all.

10 MR. FILIPOVIC: Okay, sure.

11 THE COURT: We'll run through one -- let's start
12 with 16.

13 MR. FILIPOVIC: Okay.

14 THE COURT: What's 16, put up 16. I can't make them
15 stipulate to anything.

16 MR. FILIPOVIC: I understand. Neither can I.

17 THE COURT: All right. Load 16.

18 BY MR. FILIPOVIC:

19 Q. Mr. Whyte, can you observe the document that's been
20 premarked as City-16 and on the screen at this time?

21 (City's Exhibit-16 previously marked for identification)

22 A. Yes.

23 Q. Mr. Whyte, have you seen this document before?

24 A. Yes.

25 Q. And what is it -- can you tell the court what that is?

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1 A. It's the same kind of eviction notice that I received
2 before.

3 Q. Okay. And so this is now the third notice that we're
4 talking about in a row, correct?

5 A. Yes.

6 Q. Is that a yes?

7 A. Yes.

8 MS. HARPER: Objection. Objection, leading.

9 BY MR. FILIPOVIC:

10 Q. Sorry. So -- concluding with the --

11 MR. FILIPOVIC: Your Honor, are you going to rule on
12 that objection or should I --

13 THE COURT: Sustained. There's nothing that was in
14 a row.

15 MR. FILIPOVIC: Okay. Okay.

16 BY MR. FILIPOVIC:

17 Q. Mr. Whyte, the prior two notices that we have just seen
18 up on the screen here marked 14 and 15, now you're looking at
19 the 16, and it appears to have a date on there as well.

20 A. Yeah.

21 Q. On the bottom left corner. Who wrote that?

22 A. I wrote that date.

23 Q. Okay. And why did you write that particular date on
24 there?

25 A. So I could remember what day that it came.

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1 Q. Okay. And what date would that be?

2 A. May 30th, 2018.

3 Q. Okay. And counting the first two notices that we talked
4 about here today, this particular document, can you tell the
5 court, you know, which occasion or did they -- does the date
6 that you wrote in correctly correspond to the date that you
7 received it?

8 A. Yes.

9 MR. FILIPOVIC: Thank you. Your Honor, we would at
10 this time move to admit City-16 as -- into evidence as notice
11 authenticated by the plaintiff.

12 THE COURT: As a document received by the plaintiff.

13 MR. FILIPOVIC: Document that plaintiff claims he
14 received in his household, addressed to him, as a member of
15 the household.

16 THE COURT: No, addressed to the debtor's household
17 and any occupants.

18 MR. FILIPOVIC: Any occupants, of which he claims to
19 be one of.

20 THE COURT: Okay.

21 MS. HARPER: Your Honor, I have issues with the
22 characterization of who it was addressed to. But setting
23 that aside, it's not addressed to anybody.

24 THE COURT: Any named person. It's addressed to
25 someone. They sent it.

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1 MS. HARPER: Not on the document we're looking at
2 here, but --

3 THE COURT: It says to judgment debtor.

4 MS. HARPER: Right.

5 THE COURT: It says the "Judgment debtor's household
6 and any occupants residing with the judgment debtor."

7 MS. HARPER: Okay.

8 THE COURT: What the judgment debtor is, I don't
9 know, because it says judgment debtor.

10 MS. HARPER: Regardless, Your Honor --

11 THE COURT: Right.

12 MS. HARPER: -- we'll allow it for the purposes as
13 defined by the court.

14 THE COURT: Right. It's only admitted as a document
15 the debtor, Mr. Whyte, says that it was left in the house,
16 because he said they were all in the house, and that he
17 believes was addressed to him as an occupant. And you wrote
18 on it on May 30th, which he says is the date he received it.
19 I'll allow it on that basis that he's authenticated it as a
20 document that he received, whether he did or didn't, I don't
21 know. But you know, it is what it is. I'm going to admit it
22 for that on the 901(b)(1). Okay.

23 (City's Exhibit-16 admitted into evidence)

24 MR. FILIPOVIC: Thank you, Your Honor. We'll move
25 on to City-17.

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1 (City's Exhibit-17 previously marked for identification)

2 THE COURT: Okay.

3 BY MR. FILIPOVIC:

4 Q. Mr. Whyte, I would like to direct your attention to
5 what's been put on the screen and identified premarked as
6 City-17. Mr. Whyte, have you seen this document before?

7 A. Yes.

8 Q. And what does that document appear to be? What is it?

9 A. That's also a letter telling me to vacate the home -- my
10 home.

11 Q. Okay. And did you -- there is also a hand -- there
12 appears to be a handwritten notation in the left bottom
13 corner of it. Do you know who placed that notation?

14 A. I did. I put the date on there.

15 Q. There appears to be -- you put that date, and why did you
16 put that date on there?

17 A. Just so I could remember the day I received it.

18 Q. Okay. Okay.

19 MR. FILIPOVIC: Your Honor, again, I would like to
20 move to admit this.

21 THE COURT: Well, there's two documents, counsel.
22 What about the second one?

23 MR. FILIPOVIC: Okay.

24 BY MR. FILIPOVIC:

25 Q. Mr. Whyte, there appears to be a sheet of paper

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1 underneath this marked as City-17. Do you know what that is?

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1 A. An eviction notice.

2 Q. Okay. And where have you seen it?

3 A. In my home.

4 Q. Okay. There also appears to be two sheets of paper, so I
5 will ask you about the same question that I asked you before.
6 There appears to be a date adjunct to the long red line on
7 the bottom of the document. And can you read for the court
8 what that date is?

9 A. That's June 5th, 2018.

10 Q. Who -- do you know who wrote that in there?

11 A. I wrote that, from my memory.

12 Q. Okay. To signify what?

13 A. The date I received it.

14 Q. Okay. How about the piece of paper that appears
15 underneath? Did you write anything else on the entire City-
16 18?

17 A. No.

18 MR. FILIPOVIC: Your Honor, we'll move to admit the
19 documents that have been premarked City-18 as exhibit
20 authenticated by the plaintiff, who says he received it in
21 his household.

22 THE COURT: Ms. Harper?

23 MS. HARPER: Objection, Your Honor.

24 THE COURT: Same limit -- same objection, that it is
25 only admitted for the purposes that the debtor testified that

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1 this is the document he received.

2 MS. HARPER: Yes, Your Honor.

3 THE COURT: All right. Admitted for that limited
4 purpose. Next.

5 (City's Exhibit-18 admitted into evidence)

6 MR. FILIPOVIC: Okay. We'll pull up City-19, Your
7 Honor.

8 (City's Exhibit-19 previously marked for identification)

9 BY MR. FILIPOVIC:

10 Q. Mr. Whyte, have you seen -- now I direct your attention
11 to the screen here. Have you seen what's on the screen here,
12 now marked as City-19? Have you seen that before?

13 A. Yes.

14 Q. And what does that appear to be? What is it?

15 A. This is the envelope that the notice came in.

16 Q. Okay. So there is an envelope. What else is there on
17 the screen, Mr. Whyte, aside from the envelope?

18 A. The notice here.

19 Q. Okay. And, Mr. Whyte, if you will, there's some
20 handwriting on the envelope itself, starting with what
21 appears to be -- well, you read -- can you read the
22 handwriting that appears on the envelope?

23 A. Yes. That's my handwriting. I dated it the date I
24 received it.

25 Q. Okay. And what about the address and the addressee? Did

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1 you write that?

2 A. No, I did not write the address.

3 MR. FILIPOVIC: Okay. Your Honor, we'll move to
4 admit this exhibit as testified and authenticated by Mr.
5 Whyte as a document he received in his household.

6 THE COURT: That he received on June 7th, 2018,
7 right?

8 MR. FILIPOVIC: Correct. Correct, Your Honor.

9 MS. HARPER: Same objection, Your Honor.

10 THE COURT: Admitted for the sole purpose of Mr.
11 Whyte's testimony that this is the letter, or the envelope,
12 that contained the notice that's the second page of City-19
13 that he received this and he noted it as being received on
14 June 7th, 2018. And excuse me if I keep saying 2019, because
15 I know it's not and I apologize. I'm trying to make sure I
16 say 2018.

17 (City's Exhibit-19 admitted into evidence)

18 MR. FILIPOVIC: Yeah, that's fine, Your Honor.

19 THE COURT: Okay.

20 BY MR. FILIPOVIC:

21 Q. Okay. Mr. Whyte, let's move on. You testified earlier
22 that you did not bring in any of these notices in the house,
23 correct?

24 A. No.

25 THE COURT: He did not what?

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1 BY MR. FILIPOVIC:

3 A. No.

6 MS. HARPER: Objection. Lack of foundation.

9 THE COURT: Assuming someone brought it into the
10 house. Lay the foundation that it got in there some other
11 kind of -- that there was no other way it could get in there.

13 BY MR. FILIPOVIC:

16 A. My uncle, Lyndel Toppin.

18 A. He's the one that brought them inside the house.

20 A. He's the only one that lives with me at the residence.

22 A. Yes.

24 A. No.

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1 A. She only comes in when I come in. She's never, you know,
2 at my house, you know, without me.

3 Q. So it's correct to say that only you and your uncle could
4 have brought these notices in and you didn't do it?

5 MS. HARPER: Objection. Calls for speculation.

6 MR. FILIPOVIC: Well, it's not speculation, Your
7 Honor. It's deductive reasoning, and I'm allowed to ask --

8 THE COURT: Ms. Harper, he says it's deductive
9 reasoning that he didn't bring it in, his girlfriend didn't
10 bring them in, so it must be Mr. Topping's.

11 MS. HARPER: It's argumentative and it calls for
12 speculation because --

13 THE COURT: Sustained. Counsel, you can argue that
14 in argument.

15 MR. FILIPOVIC: Sure. Thank you, Your Honor.

16 BY MR. FILIPOVIC:

17 Q. Okay. So did you -- so your girlfriend, did she -- okay,
18 never mind. Just to repeat that, no one besides you or your
19 uncle -- does anybody besides you and your uncle have the key
20 to the house?

21 A. No, just us two.

22 Q. Okay. Thank you. That's easy enough. All right. I'm
23 going to direct you to some questions.

24 MR. FILIPOVIC: Your Honor, if I may, I apologize,
25 it's getting -- can I turn the light on in this room where I

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1 am?

2 THE COURT: Sure.

3 MR. FILIPOVIC: All right. Real quick.

4 (Pause in the proceedings)

5 MR. FILIPOVIC: I apologize. It took me a while to
6 find the switch.

7 THE COURT: That's okay. If I go look for mine, I
8 probably don't know where it is either. Okay.

9 MR. FILIPOVIC: Okay. Back on the record.

10 BY MR. FILIPOVIC:

11 Q. Mr. Whyte, I'll ask you now some questions about your
12 uncle. And I'm going to direct you at the exact time when
13 these notices started arriving at your house. How did those
14 notices affect your uncle, if at all? From your own personal
15 observations?

16 A. Well, from me seeing, you know, and knowing, and living
17 with him for so long, he's just -- he's been kind of like
18 distorted. You know, he's always like looking at me when he
19 picks up the papers, just like to -- for me to give a good
20 response to him, you know, basically on it. But I think -- I
21 can't really give a good response because I don't know a good
22 response. I don't know how this situation is going to turn
23 out. So and my stress, you know, leans off on him. But on
24 top of that also, just been -- you know, he's been off. He
25 hasn't been, like, 100%. You know, he's been smoking

Whyte - Direct

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1 cigarettes more a lot. He's been, like, not basically eating
2 the dinners that I, like, serve for him or, like, put out for
3 him to eat.

4 Q. Well, let me ask you this, Mr. Whyte, and sorry to
5 interrupt, but I did want to ask you this. Did you ever see
6 your uncle in the room, you know, with these notices? And
7 did he take a note of them? Did you notice that he took a
8 note of the notice, if you will?

9 A. Well, actually, I have them downstairs. All the
10 documentation from this case, I have all downstairs on my
11 dining room table. So if you walk in, you would be able to
12 see it. You can't miss any of it.

13 Q. Well, I'm asking you if you saw him, your uncle, with
14 respect to these notices?

15 A. Yes.

16 Q. What did you see?

17 A. Well, he's picked up the notices a couple times, and as I
18 say, he's just been looking at me to give him an answer, but
19 I can't really give him an answer. You know, and that's when
20 --

21 Q. Okay.

22 A. -- he nods his head, shakes his head, and you know, we
23 can -- I can just -- I don't know, I just walk off at that
24 point.

25 Q. Yeah.

Whyte - Direct

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1 A. (Indiscern.) explain it to him.

2 Q. Do you think that from your, I guess, experience with
3 your uncle, what kind of effect, if any, do you think that
4 they had on him and did that manifest itself somehow in his
5 behavior? If you could tell the court.

6 A. Well, as I said before, he hasn't been eating. Like, his
7 normal routine, and he's been, like, smoking more Newports,
8 you know, now because, you know, I smell it more often now.
9 And like I say, he's like -- he's basically not what I'm used
10 to. He's, like, kind of out of it. He's been, like, missing
11 sleep and things like that. Because I would notice when I
12 come in his, you know, light would be on in his room about
13 2:00, 3:00 in the morning. Normally, you know, we're asleep
14 and the household is down by that time.

15 Q. Do you believe upon your personal observations, did he
16 understand what the notice entails? Do you know if he knows
17 what it means to vacate?

18 A. Well, he doesn't -- he cannot read the notice at all, but
19 what he actually directly pointed out to me was, you know,
20 the big bold red letters and the little shield that's on
21 there. That's mainly what he pointed out to me.

22 Q. Okay. And how is he now? It's been some time since the
23 notices came in, how is he now?

24 A. He's still not eating on, you know, on schedule as we
25 usually do. He's still smoking a lot. He's still doing

Whyte - Direct

1 that. And he's still just, like, sitting around in the
2 living room, you know, just there. He's not -- like, with no
3 T.V. on or nothing. He'll just be, like, there.

4 Q. Okay. And Mr. Whyte, now what I asked you, you haven't
5 gotten evicted yet. You are still living there with your
6 uncle, correct?

7 A. Yes.

8 Q. Okay. But what if you had gotten evicted --

9 MS. HARPER: Objection. Calls for speculation.

10 THE COURT: Counsel? The statement calls for
11 speculation.

12 MR. FILIPOVIC: Right. Well, to some extent it
13 does, Your Honor. But --

14 THE COURT: Sustained.

15 MR. FILIPOVIC: Okay.

16 THE COURT: Ask him something else.

17 MR. FILIPOVIC: Okay.

18 THE COURT: You're agreeing it calls for
19 speculation, why would you ask --

20 MR. FILIPOVIC: Well, because we have a specific
21 situation here, somebody testifying on somebody else's
22 behalf.

23 BY MR. FILIPOVIC:

24 Q. But let me ask you this, does your uncle have any other
25 place to go besides that house?

Whyte - Direct

1 A. No, he doesn't.

4 A. No, it's just me.

8 A. No, absolutely not.

10 THE COURT: Okay. He's homeless. Ms. Harper, I
11 know what that objection is. I'm going to -- you know.

13 THE COURT: That's an assumption. He can go into a
14 shelter. He could do a lot of things, but it is what it is.
15 I'll allow (inaudible) worth.

17 BY MR. FILIPOVIC:

21 A. Other than just, you know, the stress of going through
22 it, there's really nothing much, you know. It's just, like,
23 basically just sitting on our hands, just waiting now to see
24 if we're going to have somewhere to live or what -- you know,
25 what the outcome is. That's the only thing that I'm really,

Whyte - Direct

1 you know, concerned and worried about. And like I said, my
2 down energy, because this has had me depressed. And my down
3 energy, you know, kind of goes when he looks at me.

6 A. Well, after the last notice I received, I didn't receive
7 any more.

10 A. I want to say, the last one around June.

12 A. Yeah.

14 A. Yes.

16 MR. FILIPOVIC: I think he said '18, Your Honor.

18 MR. FILIPOVIC: Okay. If I could -- I know, Your
19 Honor, that we're only supposed to be talking one at a time,
20 but I don't know if I'm allowed to ask. I wouldn't have any
21 further questions for Mr. Whyte, unless I want to briefly
22 consult with Mr. Dunne if maybe I'm missing something, but I
23 wouldn't have any further questions for Mr. Whyte.

Whyte - Cross

Whyte - Cross

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1 Q. I just wanted to clarify that for the record, because
2 we're all concerned about getting a clear record here. You
3 mentioned -- you testified earlier that when you saw these
4 notices that you have identified here, and I believe, and
5 correct me if I'm wrong, that there were six notices. You
6 testified that they were in the house when you saw them, is
7 that correct?

8 A. Yes.

9 Q. All right. I'm going to pull up -- have the City
10 Exhibit-22, please. Actually, let me ask you, do you recall
11 earlier in this case giving your deposition testimony?

12 (City's Exhibit-22 previously marked for identification)

13 A. Yes.

14 Q. Okay. If you could take a look at the first page of
15 what's been marked as City-22, we could go to the top of that
16 page. That should be -

17 THE COURT: Counsel, can you hold just one second
18 for me.

19 (Pause in the proceedings)

20 MR. DUNNE: Mr. Whyte would like to take a short
21 restroom break.

22 MS. HARPER: I think Your Honor has stepped away.

23 So I don't have any objection to that, but she's --

24 MR. FILIPOVIC: I don't. We'll let her know.

25 A. Okay. Thanks.

Whyte - Cross

1 MS. HARPER: Well, Mr. Dunne --

4 MS. HARPER: The witness has just left, with his
5 counsel behind him.

7 MR. FILIPOVIC: No.

9 MR. FILIPOVIC: No.

12 MR. FILIPOVIC: Your Honor, I'm right here. He
13 asked a short restroom break a second ago, and Ms. Harper
14 said she had no objection, and then she started --

16 MR. FILIPOVIC: He has to let him -

19 MR. FILIPOVIC: He has to let him in the bathroom.

21 THE COURT: Mr. --

24 THE COURT: -- Whyte, no, no, no. Mr. Whyte, you're
25 not to discuss your testimony with Mr. Dunne. You're still

Whyte - Cross

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1 under oath. And the first thing I'm going to ask you when
2 you get back here is did you discuss your testimony, and I
3 expect you to tell me if you did or you didn't. So you can
4 take him to the bathroom, I just want to, you know, put that
5 on the record so there's no question, you cannot talk to him.
6 You can talk to him about the weather, talk to him about
7 anything you want, nothing relating to this case. Okay?

8 A. Okay, thank you.

9 THE COURT: All right. So we'll take a break and I
10 -- again, I don't know why, you know, today of all days, I
11 get all of these packages. My house is the package delivery
12 for the family. All right. So I'm going to put everybody on
13 video stop first and then I'll be able to observe when they
14 come back into the room, and then, Ms. Harper, you can start
15 your cross examination. I'm going to put you on mute so that
16 I can -

17 MS. HARPER: I put myself on --

18 MR. FILIPOVIC: Your Honor, may I ask a question
19 while I have your attention and we're off the record?

20 (Pause in the proceedings)

21 THE COURT: All right. It looks like everybody is
22 back. Mr. Whyte, I'm assuming that you took -- you know,
23 that you understood my directions and you did not speak at
24 all or discuss at all with Mr. Dunne your testimony.

25 A. No.

Whyte - Cross

1 THE COURT: Okay. All right, Ms. Harper, you can
2 continue.

3 MS. HARPER: Thank you, Your Honor. Let me try and
4 pick up where we left off.

5 THE COURT: City-22 you were referring.

6 CROSS EXAMINATION (CONT'D)

7 BY MS. HARPER:

8 Q. Yes, Mr. Whyte. And you recall, I had asked you -- I
9 referenced your earlier testimony where you mentioned that
10 you had seen all of the notices in the house, is that
11 correct?

12 A. Yes.

13 Q. Okay. So then I'd like you to refer to City-22, and the
14 first page. We talked about how earlier in the case you
15 recall giving your deposition testimony, is that correct?

16 A. Yes.

17 Q. All right. And did you take a look at what has been
18 marked as City-22, and look at the first page. Do you see
19 where it says, "Oral deposition of Barrington Whyte?"

20 A. Yes.

21 Q. Okay. So I'd like you to refer to your deposition
22 testimony and refer to page 41, please.

23 THE COURT: 41, counsel? I don't know how we're
24 going to do that. All right. Oh, that was quick.

25 MR. FILIPOVIC: There is a search button.

Whyte - Cross

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1 THE COURT: Okay. I was giving John a lot of
2 credit, John.

3 MR. FILIPOVIC: Cheating. It's cheating, yeah.

4 THE COURT: Tells you how technology deprived I am.

5 MR. FILIPOVIC: Well, no you're not, Your Honor.

6 You're doing this trial by Zoom. I think it's great.

7 THE COURT: This isn't my first trial, though. I've
8 done it in -- I forget that I'm actually not in the
9 courtroom. All right.

10 MS. HARPER: Okay.

11 THE COURT: Go ahead, Ms. Harper.

12 MS. HARPER: All right.

13 BY MS. HARPER:

14 Q. Mr. Whyte, looking at page 41, please refer to line 11.

15 And I'm going to read from that section of the deposition
16 which states -- do you see where I'm speaking of, where it
17 says, "When the first notice?" Do you see that?

18 A. Yes.

19 Q. "When the first notice that you saw on the property, what
20 date is that?" And the answer is, "May -- well, it was
21 around May 18th. Around May. {period} Around the 18th,
22 around that time in May." Do you see that?

23 A. Yes.

24 Q. Okay. And the next question is, "And where was the
25 notice that you observed?" And the answer, "That one was on

Whyte - Cross

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1 the front door." {period} Now, this was deposition
2 testimony.

3 MR. FILIPOVIC: Objection. Pursuant to Rule 106,
4 you have to read his entire answer to that question --

5 MS. HARPER: Fine.

6 MR. FILIPOVIC: -- and there is a little more.

7 MS. HARPER: There is a little more.

8 THE COURT: All right. What does it say?

9 MS. HARPER: Thank you, counsel. It says --

10 MR. FILIPOVIC: You're welcome.

11 MS. HARPER: -- "There was one on the front door.
12 It was posted on the front door, inside of the screen door."
13 All right. Let me go on, because that's a good follow-up
14 here, and you -- continuing to read, it states, "And you
15 observed one notice on May 18th?" It says, "Yes."

16 THE COURT: Okay.

17 MS. HARPER: Okay.

18 BY MS. HARPER:

19 Q. Now, earlier in your testimony you stated that all of the
20 notices that you saw, you observed in the house. So looking
21 back on your deposition testimony where you stated that the
22 first one you saw was posted on the front door, which of your
23 testimonies is correct here?

24 A. It was on the front door, then I took it in the house,
25 and that's why it was with the remainder of the other notices

Whyte - Cross

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1 in the house.

2 Q. Okay. So you're changing your testimony from earlier
3 where you stated that all of the notices were inside the
4 house when you first saw them?

5 A. They were all inside the house, because I brought the
6 first notice inside the house.

7 Q. Okay. I'm going to also ask then to turn to City-13.

8 (City's Exhibit-13 previously marked for identification)

9 THE COURT: City what?

10 MS. HARPER: City-13, Your Honor.

11 THE COURT: Okay.

12 MS. HARPER: Yes.

13 BY MS. HARPER:

14 Q. And please ignore that first page. I apologize. That
15 was a scanning error on my part. But the document -- the
16 second page of this document is marked City-13, do you see
17 that?

18 A. Yes.

19 Q. And you see where it states the "plaintiff's responses to
20 defendant, the Sheriff of the City of Philadelphia's first
21 set of interrogatories." Do you see that?

22 A. Yes.

23 Q. Okay. And then if we can turn to Interrogatory #14,
24 please.

25 THE COURT: No cheating on that one.

Whyte - Cross

1 BY MS. HARPER:

10 MR. FILIPOVIC: Permitted.

12 Q. And it states, "Amended A" -- pardon me -- "Armed
13 Philadelphia sheriffs appeared at my home and posted six
14 separate notices to vacate and eviction notices that caused
15 me a substantial amount of undue frustration, anxiety, and
16 mental anguish." Do you see that, Mr. Whyte?

18 Q. And when you were -- well, let me ask you this, did you
19 help to prepare these responses to interrogatories?

21 Q. Where -- earlier in your testimony, again, let me just
22 reiterate, was that the notices were inside the house when
23 you first observed them. Where does that information in
24 response to Interrogatory #15(a) come from?

Whyte - Cross

1 Q. Well, did you tell your counsel -- well, I shouldn't ask
2 that. In preparing responses to these interrogatories, did
3 you state that "armed Philadelphia sheriffs appeared at my
4 home and posted six separate notices to vacate, and eviction
5 notices that caused me a substantial amount of undue
6 frustration, anxiety, and mental anguish?" Did you provide
7 them the information there that states that armed
8 Philadelphia sheriffs --

Whyte - Cross

Whyte - Cross

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1 would see it -- actually, my neighbors were calling me and
2 telling me that there was someone there.

3 MS. HARPER: Objection. That's hearsay.

4 A. Okay.

5 MR. FILIPOVIC: Well, objecting to your own -- you
6 can't object to his own --

7 MS. HARPER: It's non-responsive.

8 THE COURT: His answer is hearsay is what she's
9 saying. Did he -- listen, we're not going to spend all day
10 playing semantics. Did you actually see the armed sheriff?

11 A. No.

12 THE COURT: All right. So when he said that answer,
13 it may not have been on personal knowledge. But he said
14 armed appeared. Okay. Ms. Harper, follow up.

15 MS. HARPER: Yes, Your Honor. Yes, Your Honor. One
16 moment. Okay.

17 THE COURT: I'm sorry. Again, I am a little
18 impatient, but we're not going to spend the time fighting
19 over semantics. You each are allowed to make your record.
20 Counsel, you were right. It doesn't say sheriff, it says
21 sheriff's apostrophe, which clearly the error, because you
22 can't be apostrophe in that point. And if -- you know, I'm
23 not quite sure what the intention was. Maybe it was to say
24 plural, but it does say what it says, and it says, "At my
25 home." So I'm assuming this is Mr. -- the debtor's answers.

Whyte - Cross

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1 I'm not quite sure why we're talking about what Mr. Whyte
2 observed, because he's, you know, does he -- and the point of
3 the matter is you're saying this is the debtor's response.
4 Nobody's telling me how even the debtor would have responded
5 to that. Okay?

6 And so this is the problem as I see it. This is all
7 about what Mr. Whyte is talking about. Okay? Nothing about
8 what the debtor reads, you know?

9 MR. FILIPOVIC: Well, that's an unfortunate
10 situation we're in, Your Honor.

11 THE COURT: Well, I don't know what the -- counsel,
12 it is what it is. I'm not quite sure. But all I know is I
13 can only go with what -- this is the debtor's claim, not Mr.
14 Whyte's claim.

15 MR. FILIPOVIC: Correct.

16 THE COURT: And all I'm hearing is Mr. Whyte. So
17 I'm just going to put that out there. Ms. Harper, proceed.

18 MS. HARPER: All right.

19 BY MS. HARPER:

20 Q. Mr. Whyte, you didn't -- Mr. Topping didn't express to
21 you that he saw armed sheriffs at the property, did he?

22 A. No.

23 Q. I'd like to refer to City-19. All right. Mr. Whyte, I'm
24 going to refer to the envelope that appears on City-19 with
25 the date of June 7th, 2018, do you see that?

Whyte - Cross

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1 A. Yes.

2 Q. Okay. And I believe your earlier testimony is that you
3 put that date on the envelope?

4 A. Yes.

5 Q. Okay. And it's your testimony that June 7th, 2018, was
6 the date that you received this -- the envelope and the
7 document that is also pictured there?

8 A. Yes.

9 Q. Okay.

10 A. That was the date that I saw it, yes.

11 Q. That's the date you saw it. Okay. If you look at the
12 top right-hand corner of the envelope, it may be difficult.
13 Maybe we can zoom in on that red stamp. Can you read the
14 date that appears there on the red stamp, underneath the
15 postage amount of 47 cents.

16 A. July 18th -- I mean June, I'm sorry. June 7th, 2018.

17 Q. Okay. So your testimony is that the date that this
18 envelope was postmarked is the date that you received it?

19 A. I see the date that it was posted, yes. But I didn't see
20 it until this day here that I wrote on the envelope.

21 Q. Okay. So it's your testimony that you believe -- do you
22 believe that it's possible -- strike that. Never mind.
23 Earlier you testified about some of Mr. Toppin's limitations.

24 A. Yes.

25 Q. There was a question posed to you regarding -- there was

Whyte - Cross

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1 testimony that he cannot read, is that correct?

2 A. Yes.

3 Q. Okay. But then there was also testimony that he can
4 understand big, bold letters. Can you -- do you recall
5 testifying the fact that you believe your uncle can
6 understand big, bold red letters?

7 A. What I actually mean is that big, bold red letters in a
8 statement, in any type of paperwork, he wouldn't look at it
9 as anything good.

10 Q. And how do you know that that's how he views it? He
11 can't read, correct?

12 A. No, he cannot. But any other letters that we've received
13 to the house, he's never been as worried as when he seen this
14 letter here.

15 Q. Okay. I'm going to refer again to the depositions --
16 City-22, which is the deposition of Barrington Whyte.

17 A. Okay.

18 Q. And if we can turn to page 22. Okay. Pardon me, page
19 24. Page 24, starting at line 8. The question was posed,
20 "Have you tried to convey to Mr. Topping what this case is
21 about?" And the answer is, "In bits and pieces, yes." Next
22 question, "Do you think he understands what you're trying to
23 convey?" Answer, "No." How does that -- how does your
24 testimony from your deposition that you don't believe Mr.
25 Topping understands what this case is about, how is that not

Whyte - Cross

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1 a contradiction to your testimony here today that he gets
2 agitated by big, bold, red letters?

3 MR. FILIPOVIC: I'm going to object to that, Your
4 Honor. This is a little beyond -- I let it go at first, but
5 it's a little beyond the scope of direct examination. It's
6 getting into --

7 THE COURT: Beyond the scope? He testified that he
8 was -- about big red letters, and so he's -- and that that
9 upset him. And how does that --

10 MR. FILIPOVIC: Right. And --

11 THE COURT: -- allow her to impeach his testimony
12 that he doesn't understand what's going on. It's just for
13 impeachment. She's allowed -- I'll allow it for what it's
14 worth.

15 MR. FILIPOVIC: Yeah. Okay.

16 THE COURT: It may not mean anything.

17 MR. FILIPOVIC: Sure.

18 THE COURT: I'm sorry. I should have let Ms.
19 Harper, but I'm -- I tend to just --

20 MR. FILIPOVIC: That's fine.

21 THE COURT: And that's not what I'm supposed to do.
22 I'm not supposed to say for Ms. Harper. I apologize for
23 that, but I've also done Ms. Harper for the plaintiff and
24 jumped in. I will try to refrain from that. Okay, Ms.
25 Harper, go ahead. I'll allow it.

Whyte - Redirect

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1 MS. HARPER: Okay.

2 BY MS. HARPER:

3 Q. So let me -- earlier in your testimony, you testified
4 that Mr. Topping has a reaction to bright red letters. Now,
5 when you gave your deposition testimony, you testified that
6 he didn't -- you don't believe he understands what the case
7 is about. So how can he understand the importance of bright
8 red letters, but he doesn't understand what this case is
9 about? It just doesn't seem to jive.

10 MR. FILIPOVIC: Objection, argumentative as far as
11 the portion that "it doesn't seem to jive."

12 THE COURT: All right. We'll strike that, Ms.
13 Harper.

14 MS. HARPER: Fine, Your Honor.

15 BY MS. HARPER:

16 Q. Is it your testimony that you think he understood what
17 these notices were?

18 A. No, he doesn't understand exactly what they are, no.

19 Q. Okay. All right.

20 MS. HARPER: I have no further questions for Mr.
21 Whyte, Your Honor.

22 THE COURT: Any redirect?

23 MR. FILIPOVIC: Yeah. I'll just ask a few.

24 REDIRECT EXAMINATION

25 BY MR. FILIPOVIC:

Whyte - Redirect

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1 Q. Mr. Whyte?

2 A. Yes.

3 Q. When -- I'll redirect you to the portion of your
4 testimony that said that all the notices, you know, you saw
5 inside the house. Is it conceivable that, you know, when you
6 saw a notice on your door, you walked it in and you looked at
7 it when you were already in the house? I mean --

8 MS. HARPER: Objection, leading.

9 MR. FILIPOVIC: Well, it's a redirect based on your
10 cross.

11 THE COURT: It's leading. It's direct. Okay,
12 counsel? It's direct. It can't be leading. You can't --

13 MR. FILIPOVIC: Okay.

14 THE COURT: I'll sustain. Just rephrase it.

15 MR. FILIPOVIC: All right. Sure.

16 BY MR. FILIPOVIC:

17 Q. Going with what Ms. Harper had asked about the notice, is
18 it possible that you found one of them just stapled to the
19 door?

20 A. Taped to the door, actually.

21 Q. Yeah, taped to the door.

22 A. Yeah. And it went inside the house.

23 Q. Yeah. Is that possible?

24 A. Yes. Yes.

25 Q. Okay. That's all.

Whyte - Redirect

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1 MR. FILIPOVIC: I have nothing further, Your Honor.

2 THE COURT: All right. I'm going to refrain,
3 because I actually have my own questions, but I'm not going
4 to try to make anybody's case for them, because it's just
5 going to --

6 MR. FILIPOVIC: Well, all right. Then I have a few
7 more.

8 THE COURT: No, no, no. You don't have a few
9 anything, counsel.

10 MR. FILIPOVIC: No, I do not. All right.

11 THE COURT: You fully limited on redirect to
12 questions that were asked on direct.

13 MR. FILIPOVIC: I am. And I did have another, if
14 Your Honor would allow it.

15 THE COURT: Ms. Harper?

16 MR. FILIPOVIC: It just occurred to me. I'm sorry.

17 THE COURT: He already said that was it. Do you --

18 MS. HARPER: He already said that was it, Your
19 Honor.

20 THE COURT: That's it.

21 MR. FILIPOVIC: Okay.

22 THE COURT: No, counsel. And, Ms. Harper, that's
23 going to be the same rule for you.

24 MS. HARPER: Yes, sir. Yes, ma'am.

25 THE COURT: Done. We're already at 1:30. We're

Whyte - Redirect

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1 only on the first witness. All right. Mr. Whyte -- Ms.

2 Harper, are you planning on calling Mr. Whyte in your case?

3 MS. HARPER: I am not, Your Honor.

4 THE COURT: All right. Mr. Filipovic?

5 MR. FILIPOVIC: Yes, ma'am?

6 THE COURT: I apologize if I'm not --

7 MR. FILIPOVIC: No, you're not. That's pretty good.

8 THE COURT: All right. Is he going to be, I guess,
9 rebuttal? I don't know. But what I'm saying is that, you
10 know, I don't want to keep him here if he doesn't have to be
11 here. I mean, he has every right to stay. I'm just going to
12 say, you know, you're fine. We're going to move on to the
13 next witness. He may want to, I don't know. Okay, but I'm
14 just putting that out there because Mr. Offen left already
15 and --

16 MR. FILIPOVIC: Yeah. We may call him on rebuttal,
17 Your Honor. So he can stay if he can stay.

18 THE COURT: I'm not saying he can't. I'm just
19 giving him that option. That's all.

20 MR. FILIPOVIC: Sure.

21 (Witness excused)

22 THE COURT: All right, next witness.

23 MR. FILIPOVIC: We'll call Lieutenant Thornton, Your
24 Honor.

25 THE CLERK: Mr. Thornton?

Thornton - Direct

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1 MR. THORNTON: Yes.

2 SEAN THORNTON, PLAINTIFF'S WITNESS, SWORN

3 THE CLERK: Thank you. Could you please state and
4 spell your name for the record?

5 MR. THORNTON: Captain Sean Thornton, spelled S-E-A-
6 N, T-H-O-R-N-T-O-N.

7 THE CLERK: And could you please state your address
8 for the record?

9 MR. THORNTON: Work address or --

10 THE CLERK: Yeah.

11 MR. THORNTON: Okay. All right. 100 South Broad
12 Street, Philadelphia, Pennsylvania 19110.

13 THE CLERK: Thank you very much.

14 DIRECT EXAMINATION

15 BY MR. FILIPOVIC:

16 Q. Good afternoon, Mr. Thornton.

17 A. Good afternoon.

18 Q. Mr. Thornton, this being the second time that I'm
19 examining you, we'll try to make this as smooth as possible.

20 Mr. Thornton, what's your occupation, sir?

21 A. I am a captain in the Philadelphia Sheriff's Office,
22 civil enforcement unit.

23 Q. And how long have you been with the sheriff's office, Mr.
24 Thornton?

25 A. A little over 13 years now.

Thornton - Direct

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1 Q. And can you describe general duties of your position,
2 sir?

3 A. I'm the commander of the civil enforcement unit, which
4 oversees the execution of writs, injunctions, PFAs, which is
5 protection for abuse orders, and other civil processes.

6 Q. Okay.

7 A. We ensure that they are enforced and executed.

8 Q. Sure. Mr. Thornton, when was the -- so you worked for
9 the Office of the Sheriff for you said a little over 13
10 years, correct?

11 A. That is correct.

12 Q. Okay. And, Mr. Thornton, have you ever held any other
13 positions within the Office of the Sheriff?

14 A. Yes. I did courtroom security, transportation, lobby
15 security, warrant unit, just to name --

16 Q. Good for you, man. It sounds like you've moved on up.
17 That's great. Mr. Thornton, having been at so many units of
18 the Office of the Sheriff, can you tell the court what are
19 all the departments that the Office of the Sheriff comprises
20 of?

21 A. We have CJC, Family Court, the warrant unit, civil
22 enforcement unit --

23 THE COURT: Wait. Slow down.

24 A. Sorry.

25 THE COURT: So CJC, which is the -- what's that?

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1 A. Criminal Justice Center.

2 THE COURT: Okay. The Criminal Justice Center. So
3 these -- when he says positions, do you mean these are all of
4 the -- what does that mean?

5 MR. FILIPOVIC: No. I'm only asking now what
6 department of the Office of the Sheriff, what departments
7 does it comprise of. So go ahead.

8 A. Okay.

9 THE COURT: That he knows of. Ms. Harper.

10 MS. HARPER: Pardon me?

11 THE COURT: Never mind. Is Mr. Dormer -- who's
12 doing this?

13 MS. HARPER: I'm sorry. Can you hear me, Your
14 Honor?

15 THE COURT: All right. Only one of you gets to
16 talk. So I see Mr. Dormer's there, but I don't know what --

17 MS. HARPER: I understand. Do you have me on video
18 as well? We switched seats, so (indiscern.).

19 THE COURT: All right. All right.

20 MS. HARPER: Okay, Your Honor. And yeah.

21 THE COURT: Okay. So he's -- the Department of the
22 Sheriff, he's asking him about the Department of Sheriff. He
23 said --

24 MR. FILIPOVIC: I'm not asking Department of the
25 Sheriff. I'm asking Office the Sheriff, what departments

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1 does it comprise of.

2 THE COURT: Departments of the Sheriff. What
3 departments is the Sheriff comprised of? That was the
4 question.

5 MR. FILIPOVIC: Yeah, Office of the Sheriff, what
6 department -- correct. I'm sorry, Your Honor. Correct.

7 MS. HARPER: Your Honor, we would object as to
8 relevance.

9 MR. FILIPOVIC: What? No, that's --

10 THE COURT: She's objecting as to relevance.

11 MR. FILIPOVIC: That's a very low threshold for
12 relevance, and she's brought forth in her opening statement
13 of defense of some department receiving notice, not the
14 other. I think I'm entitled to ask this witness about what
15 all departments Office of the Sheriff is comprised of.

16 THE COURT: That he knows of.

17 MR. FILIPOVIC: That he knows of. Yeah, that he
18 knows of.

19 THE COURT: That he knows of.

20 MR. FILIPOVIC: He started to answer. And he was
21 already in the middle of answering.

22 THE COURT: Ms. Harper, it's that he knows of. He's
23 your representative of the sheriff. That's all I'm trying to
24 figure out who he's testifying for. Look, I'm not going to
25 do you guys' job for you. Answer the question. I just want

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1 to make sure when I go over this record I'm pretty clear
2 who's what.

3 So as far as you know, Mr. Thornton, what are the
4 departments of the Sheriff?

5 A. We have different installations which include Criminal
6 Justice Center, Family Court, the Warrant Unit, Civil
7 Enforcement Unit --

8 THE COURT: Hold on. Warrant unit, Civil
9 Enforcement Unit.

10 A. Real estate.

11 THE COURT: Real Estate Unit?

12 A. Yes.

13 THE COURT: Okay. And so Family Court Unit, Warrant
14 Unit, CJC Unit, or is that something different? I just want
15 to make sure I've got the right definition.

16 A. Well, it's just the building that we do security in. We
17 house the custodies that are brought down from court.

18 THE COURT: Hold on.

19 (Pause in the proceedings)

20 THE COURT: All right. All right. Counsel, I
21 apologize.

22 MR. FILIPOVIC: That's fine, Your Honor.

23 THE COURT: Real Estate Unit, what else?

24 A. CJC, Family Court, and that was pretty much it.

25 THE COURT: So Warrant Unit, CJC, Family Court,

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1 Warrant Unit, Civil Enforcement Unit, and Real Estate Unit.

3 THE COURT: Anything else?

5 BY MR. FILIPOVIC:

8 A. That is correct.

12 A. Yes, I do.

14 A. The policy -- I'm sorry?

16 A. The policy says that we're supposed to stop action, be
17 ordered to stop action any type of enforcement.

21 A. That is correct.

25 (City's Exhibit-26 previously marked for identification)

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1 THE COURT: What are we looking at?

2 MR. FILIPOVIC: This is City or Sheriff's Exhibit-
3 26, Your Honor. Plaintiff's also 26 coincidentally.

4 THE COURT: Okay.

5 BY MR. FILIPOVIC:

6 Q. I'll give you a moment to review it, sir. It's the same
7 exhibit we used at your -- do you see it?

8 A. Yes, sir.

9 Q. All right. Mr. Thornton, I'm going to ask you to direct
10 your attention to the very top of the document of page 1.
11 And read for the record, please, the -- well, let me ask you
12 this -- strike that. What is this document? Sir, have you
13 seen it before?

14 A. Yes, I have.

15 Q. You just said that there are policies and procedures with
16 the sheriff, is that what you were referring to?

17 A. Yes, sir.

18 Q. Okay. And what is the date that's listed on the top of
19 this page?

20 A. The date says May 12th, 1988.

21 Q. And then after that?

22 A. It says, "Revised August 1st, 2014."

23 Q. To your best knowledge, has it been -- is there another
24 policy or revision since then?

25 A. I'm sorry, can you repeat that, sir?

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1 Q. Yeah. Has there been another policy or revision since --
2 do you know of another policy besides the one you're looking
3 at?

4 A. I don't --

5 MS. HARPER: Objection.

6 MR. FILIPOVIC: Based on what?

7 MS. HARPER: There's no foundation as to what policy
8 -- other policies he's speaking of. I don't know how --

9 MR. FILIPOVIC: He's not speaking of any. I'm
10 asking him if he knows of any.

11 THE COURT: Whoa, whoa, whoa. She gets to make her
12 statement and you get to respond.

13 MS. HARPER: The form of the question was as to have
14 there been -- well, I'll let the witness answer. The form of
15 the question is, "Has there been any other policy
16 amendments," like which policies are we talking about? Are
17 we talking about all the policies in the sheriff's office?

18 MR. FILIPOVIC: Okay. I'll specify.

19 BY MR. FILIPOVIC:

20 Q. This particular policy that you're looking at, Mr.
21 Thornton, the one that you just read was revised in August of
22 2014, do you know of any more recent revisions of the same
23 policy?

24 A. I do not.

25 Q. Thank you, sir.

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1 THE COURT: What? You do not?

2 A. I do not. No.

3 THE COURT: You do not know, okay.

4 BY MR. FILIPOVIC:

5 Q. Okay. And can you read for me where it says --

6 MS. HARPER: Objection. I'm sorry. I just have to
7 make sure you're categorizing that as he does not know as in
8 N-O, not know as in K-N-O-W, because I think that was the
9 characterization of his testimony.

10 THE COURT: He said he do not know. I thought it as
11 K-N-O-W of any other revisions to that document. He does not
12 know. Is that what you're saying, Mr. Thornton?

13 A. No, I'm saying is I don't think there's no updates to or
14 revision to this particular policy.

15 MR. FILIPOVIC: Thank you.

16 A. This is the (indiscern.) policy that we go by.

17 THE COURT: Okay.

18 MR. FILIPOVIC: Thank you. Thank you, sir.

19 BY MR. FILIPOVIC:

20 Q. Subject line right under where it says, "Directive," can
21 you read that for the record, please, sir?

22 A. Where it says, "Purpose?"

23 Q. No, but where it says, "Subject," and then there's more
24 on what you --

25 A. Okay. Subject, it says, "Enforcement."

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1 Q. And then in the parentheses.

2 A. "Stay order."

3 Q. Okay. All right. And then if you could read, please,
4 the purpose.

5 A. "The purpose of this directive is to establish a policy
6 of receiving, recording, and handling of stay order,
7 bankruptcy petitions, and appeals when received by the
8 sheriff's office."

9 Q. Thank you, sir. And then if you could read for us where
10 it says Roman Numeral II, underlying policy and then where it
11 says "bankruptcy." Could you read it starting with
12 "bankruptcy?"

13 A. Yes. "Number one, when received by the sheriff's office,
14 all legal action is to stop. Detail" --

15 Q. Thank you, sir. You don't need to read any further.

16 MR. FILIPOVIC: Your Honor, I'd like to --

17 BY MR. FILIPOVIC:

18 Q. And is this policy kept on file in the regular course of
19 the business of the sheriff?

20 A. Yes.

21 Q. And is it a regular course of business of the sheriff to
22 promulgate such policies and maintain them on file?

23 A. I'm sorry. Can you repeat that?

24 Q. Is it a regular course of business of the sheriff to put
25 together this policy? In other words, did the sheriff of

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1 Philadelphia or its attorneys put this policy together?

2 A. Yes.

3 MR. FILIPOVIC: Thank you. Your Honor, I'd like to
4 move to admit this policy into evidence, this document, and
5 that would be City-26.

6 THE COURT: Ms. Harper?

7 MS. HARPER: I have no objection to that.

8 THE COURT: Okay. Admitted.

9 (City's Exhibit-26 admitted into evidence)

10 BY MR. FILIPOVIC:

11 Q. Lieutenant Thornton, sir, going back to --

12 THE COURT: Who dropped off?

13 MR. FILIPOVIC: I'm sorry. No, no, we went back to
14 -- I'd like if -- I still have a few more questions on this
15 particular document. I know it's --

16 THE COURT: No, no. Ms. Godfrey left already. I
17 know she had to leave for an emergency doctor's appointment.
18 I just think she's not on here anymore. Somebody did drop
19 off. I can --

20 MR. FILIPOVIC: Okay.

21 THE COURT: Okay.

22 MR. FILIPOVIC: Your Honor, if we could pull up the
23 sheriff's policy again, because I'd like to ask this witness
24 a few more questions about it.

25 BY MR. FILIPOVIC:

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1 Q. Sir, under -- I'm going to direct you to the policy of
2 bankruptcy that you read, and the first sentence, "When
3 received by the sheriff's office." Do you see that? Mr.
4 Thornton?

5 A. Yes.

6 Q. Okay. Now, do you agree or not agree that it doesn't
7 specify any particular department in the sheriff's office, it
8 just says Sheriff's Office, correct?

9 MS. HARPER: Objection as to relevance.

10 MR. FILIPOVIC: Well, Your Honor, we believe it's
11 very relevant, because Ms. Harper, one of her defenses that
12 you heard in the opening statement and throughout this case
13 is that, you know, this department received notice but not
14 the other department. And now we have a policy, which is up
15 to date --

16 THE COURT: It says the sheriff's office. Okay.

17 MR. FILIPOVIC: Yeah, it says the sheriff's office.

18 THE COURT: It doesn't say department.

19 MR. FILIPOVIC: It doesn't say a department. Okay.

20 THE COURT: Okay.

21 MR. FILIPOVIC: That's all. All right. Good.

22 THE COURT: Do you agree, Mr. Thornton, it doesn't
23 say which department. It says when received by the sheriff's
24 office.

25 A. That is correct.

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1 THE COURT: Okay.

2 Q. Thank you. Thank you.

3 MR. FILIPOVIC: And at this point, Your Honor, if we
4 could pull up Plaintiff's 23 and these are -- Your Honor,
5 Plaintiff's-23 through Plaintiff's-34 are really all a part
6 of -- it's just -- it's the request for admission -- it's the
7 responses to the request for admissions in this matter that,
8 you know, we've asked them to admit certain things. They
9 filed their answer under oath and the purpose of these
10 requests are sort of in the same facts don't have to be -- we
11 don't have to bring witnesses. We will move to admit these -
12 - this should be one exhibit, but we could move to admit them
13 in the bulk. It's really all just the responses to the
14 request for admissions.

15 And at this time, we would like to move to admit the --

16 THE COURT: Wait a minute, wait a minute, wait a
17 minute, whoa, whoa, whoa.

18 MS. HARPER: Objection, Your Honor.

19 THE COURT: Whoa, whoa, whoa.

20 MR. FILIPOVIC: Okay.

21 THE COURT: What does that have to do with this
22 witness? Are you finished cross examining him?

23 MR. FILIPOVIC: I'm not cross examining him. I'm on
24 direct with this witness, Your Honor.

25 THE COURT: So you're finished direct testimony with

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1 him?

2 MR. FILIPOVIC: Well, no, I'm not, Your Honor, but
3 I'd like -- at this point, I'd like to ask him some questions
4 on this and I would like to avoid an objection that says
5 asking from items not in evidence, request for admissions.
6 Responses are automatically evidence.

7 THE COURT: That all say the Philadelphia Law
8 Department. What does that have to do with him?

9 MR. FILIPOVIC: I'm sorry?

10 THE COURT: I mean, I'm not understanding.

11 MR. FILIPOVIC: Well, this is only P-20. Whatever
12 it is, we've sent these requests. If you look at page --

13 THE COURT: I get it, counsel. And you're going to
14 ask him questions about admissions that were admitted by the
15 law department?

16 MR. FILIPOVIC: No, not department. We sent this to
17 the Philadelphia Office of the Sheriff that this is for the
18 Plaintiff.

19 THE COURT: Okay. And the --

20 MR. FILIPOVIC: That party is who filed these
21 answers. So his responses --

22 THE COURT: He didn't file them. Are you saying
23 he's the representative of the sheriff and he's -- and those
24 answers are binding on him as the representative of the
25 sheriff? Is he here as a representative of the sheriff or as

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1 an employee?

2 MR. FILIPOVIC: Your Honor --

3 THE COURT: Which one?

4 MR. FILIPOVIC: -- notwithstanding this witness, I'm
5 going to -- we have -- the parties are entitled to admit the
6 request for admission. That's for their admissions.

7 THE COURT: You are, counsel. My question is you
8 are cross examining Mr. Thornton.

9 MR. FILIPOVIC: I'm not cross examining him, Your
10 Honor. I'm on direct.

11 THE COURT: I apologize. You called him as a direct
12 witness. And you want to admit these so that you can ask him
13 questions about admissions that were admitted by the sheriff?

14 MR. FILIPOVIC: Correct. Yes.

15 THE COURT: And he is a representative of the
16 sheriff or he's here as his own capacity as an employee?

17 MR. FILIPOVIC: He was produced in the deposition as
18 a representative of the sheriff, Your Honor.

19 THE COURT: Okay. So he's the sheriff's
20 representative with respect to these answers?

21 MR. FILIPOVIC: That is correct. We asked for a
22 representative --

23 THE COURT: Right, Ms. Harper? Is this the
24 sheriff's representative? That's what he's produced as. I'm
25 just asking.

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1 MR. FILIPOVIC: He's a 30(b)(6) witness, Your Honor.

2 THE COURT: Okay.

3 MS. HARPER: For purposes of a trial, Your Honor.

4 But he is a --

5 THE COURT: All right.

6 THE COURT: -- representative of the sheriff's
7 office available to testify today. There's no basis to move
8 THESE -- this document into evidence.

9 MR. FILIPOVIC: No basis? We don't need basis.
10 These are requests for admissions. The rules --

11 THE COURT: Whoa, whoa, whoa. Ms. Harper, why do
12 you think there's no basis for their admission?

13 MS. HARPER: It's my understanding that if these --
14 if he wants to move these requests for admissions into
15 evidence for some purpose -- it has to be for some purpose.
16 We haven't established a foundation for them. We haven't
17 established --

18 MR. FILIPOVIC: Your Honor, rule --

19 MS. HARPER: (Indiscern.) --

20 MR. FILIPOVIC: -- 36 admissions are admissible.

21 THE COURT: Rule 36 says, hold on. Let's see what
22 Rule 36 says. Can be admitted as an admission, right, is
23 that what it says?

24 MR. FILIPOVIC: That's right.

25 THE COURT: Okay. Hold on. Evidentiary Rule 36. I

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1 mean, I don't know what to tell you, Ms. Harper. I mean Rule
2 36 -- let me go to the rules of evidence in here. Okay, come
3 on now. I'm in the wrong. I've got to go to 7036.

4 Okay. Rule 7036, a party may serve, blah, blah, blah.
5 Okay. So a matter admitted is conclusively established.

6 MR. FILIPOVIC: There we go.

7 THE COURT: That they were conclusively established
8 that the -- I'm looking at 17 that says the Philadelphia Law
9 Department received it. Okay.

10 MR. FILIPOVIC: That's a matter of argument, Your
11 Honor, that's 17. There's 1 through way many numbers.

12 THE COURT: Counsel, I only said 17. I didn't say
13 anything else.

14 MR. FILIPOVIC: Okay.

15 THE COURT: All of these -- whatever they said they
16 admit. Okay?

17 MR. FILIPOVIC: Correct.

18 THE COURT: Okay, Ms. Harper, why can't they be
19 admitted? You admitted that 17, the Philadelphia Law
20 received it. They admitted that it went to whatever it is.
21 It is admitted only that -- whatever the answer was, you said
22 is admitted only that, a (indiscern.) was sent to the Civil
23 Enforcement Unit and that it had whatever it had on it. They
24 qualified their answer. So that's what the answer is. Is 18
25 -- I'm sure it goes down further.

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1 MR. FILIPOVIC: Sure.

2 THE COURT: Okay, Ms. Harper? They were admitted
3 with those answers only and you can't make them general
4 because that was what they were admitted only.

5 MR. FILIPOVIC: Sure.

6 THE COURT: Okay?

7 MR. FILIPOVIC: Yes, so we'd like to --

8 THE COURT: All right. So those are admitted
9 because they're admissions, and that's --

10 MR. FILIPOVIC: So we --

11 THE COURT: P what?

12 MS. HARPER: (Indiscern.) objections that they're
13 not -- they're objections.

14 MR. FILIPOVIC: P-20?

15 THE COURT: Wait. What is your objection, Ms.
16 Harper?

17 MS. HARPER: Well, I'm saying that the document that
18 they're seeking to admit is only a portion of a document that
19 includes --

20 MR. FILIPOVIC: We're going to -- right. So we seek
21 to admit P-20 for -- P-23 to P-34, which is the entire
22 document.

23 THE COURT: Okay.

24 MR. FILIPOVIC: It should never have been separated
25 into that many exhibits. That's our mistake.

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1 THE COURT: Well, who separated it?

2 MR. FILIPOVIC: Well, we did, Your Honor. I'm
3 sorry, but we move to --

4 MS. HARPER: Apparently, there's a --

5 MR. FILIPOVIC: We could move to admit each one, or
6 either one, but they're all -- P-23 through P-34 are all
7 numbered requests for admissions and the parties defendant's
8 responses thereto. And we're entitled to admit them.
9 They're only being admitted to what they say, nothing else.

10 THE COURT: Okay, Ms. Harper?

11 MS. HARPER: Your Honor, my concern is that the
12 actual responses to the requests for admissions have general
13 objections that are not depicted in any of the exhibits.

14 THE COURT: So we need -- well, it would be in the
15 general objections. He's saying he wants to put the entire
16 ones.

17 MR. FILIPOVIC: Yeah, the entire responses with all
18 of the --

19 THE COURT: Where's the general reservations? Where
20 are they at? I can't see them.

21 MS. HARPER: They're not included on the document
22 that counsel seeks to admit.

23 THE COURT: Well, he said 23 through 34 has
24 everything.

25 MS. HARPER: It's -- my review of those documents,

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1 Your Honor, and perhaps counsel can take a moment to take a
2 look, but these are pages -- pages, they're not the entire --
3 there's no signature page. There's nothing.

4 MR. FILIPOVIC: Okay. Well, if you, you know, we
5 have the document that has.

6 THE COURT: Well then, you need to give it to me.
7 What am I supposed to do with it? If you don't have the
8 entire --

9 MR. FILIPOVIC: Yeah, but --

10 THE COURT: -- entire exhibit, I need to look at
11 what they generally -- because if I'm going to find they
12 made an admission, I have to see what their reservations was
13 and I have to --

14 MR. FILIPOVIC: Sure.

15 THE COURT: -- find it.

16 MR. FILIPOVIC: Sure.

17 THE COURT: So she has a valid objection. It's not
18 the entire document. Where --

19 MR. FILIPOVIC: Sure. So we'll send the entire
20 document, Your Honor.

21 THE COURT: Oh, no, no, no, send nothing. It needs
22 to be here now. This is the trial. You don't send anything
23 later. It's a trial. Now, maybe Mr. Dunne over there can
24 figure out how to get it to you but --

25 MR. FILIPOVIC: I have it. I have it, Your Honor.

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1 I have it and I can just send it to -- Dave admitted it and
2 it's been shared among us. The only thing missing before you
3 is maybe the first page and I have it in a binder marked --

4 THE COURT: And she said there is no signature page.

5 MR. FILIPOVIC: Well, she should have verified them.

6 THE COURT: She don't have to -- your -- it's your
7 exhibit, you're supposed to produce it. She should have
8 nothing. If you're producing it as your exhibit, it was
9 incumbent upon you to make sure you had the entire amount,
10 just like you objected to her talking about the deposition
11 and not having the entire document. So I'm sure you're all
12 familiar with the entire document and the fact that you
13 didn't put the first page or the signature page. How is that
14 her fault? That's your exhibit. She's objecting that it's
15 not the entire document. Mr. --

16 MR. FILIPOVIC: The only way that we wouldn't have
17 it is if they never sent it but --

18 THE COURT: What do you mean they didn't send it?

19 Your -- your position is --

20 MR. FILIPOVIC: We have the file that's -- we have
21 the file --

22 THE COURT: -- your position is she sent you an
23 answer that didn't include the first page and the signature
24 page?

25 MR. FILIPOVIC: No, no. We definitely have the

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1 first page, Your Honor, and I have that. As for the
2 signature page, the City knows they should have verified
3 their responses.

4 THE COURT: The City knows anything. I don't know
5 what you have or don't have. You didn't object and if
6 they're not verified, how the heck they even admitted then if
7 nobody signed.

8 MR. FILIPOVIC: They were. They were verified. I'm
9 sure there is --

10 THE COURT: They why didn't you just say the City
11 should have verified, if now you're saying they actually did
12 verify, which one is it?

13 MR. FILIPOVIC: No, I didn't say they didn't verify
14 them, Your Honor. I'm sure that there is a page like I
15 said --

16 THE COURT: And they should have verified what?

17 MR. FILIPOVIC: We split these up and, you know, we
18 shouldn't have split them up but the binder --

19 THE COURT: That's not her job to tell you that you
20 shouldn't have split them up. It's not Ms. -- the Sheriff's
21 or the counsel's job to tell you that you didn't have the
22 entire document. They don't tell you how to run your case.
23 The same --

24 MR. FILIPOVIC: No, you're right. And I --

25 THE COURT: So, why are you saying --

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1 MR. FILIPOVIC: -- I have the entire --

2 THE COURT: -- so but you didn't -- so Ms. Harper,
3 do you -- do you object to him now trying to submit it when
4 he didn't give it to us in advance?

5 MS. HARPER: I do, Your Honor. I mean, this is not
6 how -- this is not how it's done. You can't -- this isn't
7 being used for impeachment. He is trying to admit this on
8 direct and it's an incomplete document. It is not the best
9 evidence.

10 MR. FILIPOVIC: Okay. And you don't want the
11 complete document in, right, because I have it.

12 THE COURT: But it's -- that's not the point, Mr.
13 Filipovic, it was your responsibility to produce it and now
14 you want to shift Ms. -- to Ms. Harper that she is asserting
15 her right to object because you fail to do something and now
16 I'm supposed to say what? She has a right to object. You
17 were obligated to produce the entire document that you wanted
18 to put into evidence, you failed to do that. And now she's
19 saying he didn't do it and I'm not agreeing to him doing it.
20 So now what?

21 MR. FILIPOVIC: Your Honor --

22 THE COURT: Now what?

23 MR. FILIPOVIC: -- I see the predicament that we're
24 in.

25 THE COURT: No, the predicament you have me in

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1 because you didn't do what you were supposed to do. Ms.
2 Harper is not agreeing. How am I supposed -- what am I
3 supposed to do with that?

4 MR. FILIPOVIC: So what exactly is her objection
5 that the page --

6 THE COURT: It is not the entire document. It's not
7 the best evidence because you failed to include the entire
8 document and therefore --

9 MR. FILIPOVIC: Okay.

10 THE COURT: -- objecting to entry for your failure
11 to produce the entire document.

12 MR. FILIPOVIC: We didn't fail to produce it, Your
13 Honor. Let's make that clear.

14 THE COURT: You're producing --

15 MR. FILIPOVIC: They're the one who produced it.

16 THE COURT: -- counsel, counsel. When you listed
17 your documents that we're going to be introduced into
18 evidence, you did not include the entire document, okay.
19 So --

20 MR. FILIPOVIC: Right, but that's different from
21 failing to produce it in discovery.

22 THE COURT: Did I say discovery? Did I mention the
23 word discovery?

24 MR. FILIPOVIC: No, you said produce, okay.

25 THE COURT: Produce in connection with the trial.

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1 MR. FILIPOVIC: Okay.

2 THE COURT: The fact you tried to clarify it as
3 discovery that's on you. Don't put words into the Court's
4 mouth. I never said produced in discovery.

5 MR. FILIPOVIC: You're right.

6 THE COURT: You failed to produce it in connection
7 with this trial as an exhibit that you intended to admit into
8 evidence. You didn't. And so now she's objecting and I got
9 to figure out what to do with it because you didn't comply
10 with what I told you to do, which was to produce everything
11 And now, you didn't produce the full document. And she has
12 every right to object because that's not the entire document.
13 And so you're asking to supplement. She's objecting because
14 she said you didn't do it right. Now, what am I supposed to
15 do now?

16 MR. FILIPOVIC: If I may, just one -- one --

17 THE COURT: Sure.

18 MR. FILIPOVIC: -- if I may, okay. Thank you. This
19 isn't extrinsic document. This is a set of requests for
20 admissions that are governed by its own rule. And those
21 documents are both -- parties are privy to them. They're the
22 ones who responded to them. They know what they are.
23 There's no prejudice whatsoever that they could claim by
24 supplementing -- just produce -- you know, producing at the
25 trial, what the rule say is conclusively immediately

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1 established by us now putting this document together.

2 They're the ones who sent it, they know about it.

3 THE COURT: So what? You're now saying I should --

4 MR. FILIPOVIC: There's no prejudice. There's no
5 prejudice --

6 THE COURT: Ms. Harper, he's saying you're not
7 prejudiced because he can now supplement it.

8 MR. FILIPOVIC: Because this is not an external
9 document.

10 THE COURT: He's asking me to -- he wants to now add
11 the papers. I mean, are you prejudiced if he does that? Is
12 that the -- first of all, is that the standard? What rule
13 that you're referring to as prejudice as the basis for my
14 determination to now supplement the document or replace
15 because now you want to put a different document in?

16 MR. FILIPOVIC: Well, I believe, Your Honor, that
17 the rule would be only as far as it pertains to your trial
18 order 140, that mandates that we produce all exhibits.

19 THE COURT: No, counsel, it's more than 140. My
20 rule is more than that. I told you to produce what you
21 wanted to, you didn't give it to them in advance and so
22 now --

23 MR. FILIPOVIC: They had it all along. They had
24 this all along. They had --

25 THE COURT: The fact that they had it all along

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1 doesn't mean that they don't --

2 MR. FILIPOVIC: And we had 11 exhibits of the same
3 exact responses that they were served with.

4 THE COURT: Ms. Harper, what are -- are you going to
5 continue objection, or you're going to -- what do you want to
6 do?

7 MS. HARPER: Your Honor, I must raise the objection
8 but in reality, it is your order, but.

9 THE COURT: It's more than my -- my order said to do
10 certain things. If you don't comply, then I have the option
11 of not allowing you to then put in the evidence.

12 MS. HARPER: And Your Honor, that is the Sheriff's
13 request that they request to supplement the record or to
14 change the record be denied.

15 THE COURT: All right. Why?

16 MS. HARPER: Because, Your Honor, rules matter for a
17 reason. We're trying to prepare for trial. It's difficult
18 enough as it is under these circumstances to prepare for
19 trial. When parties do not comply with the court's orders,
20 it makes it additionally difficult. These documents were not
21 produced accurately or completely and now they're being moved
22 into admission. And what happens if the document that's
23 supplemented isn't accurate or there is some other additional
24 problem? Is there a new trial? Is there a new hearing as to
25 the admission of that document?

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1 THE COURT: I guess the question is do you -- you
2 didn't say let me do and you get some time to look at it? I
3 mean, that's what I would have typically say, okay. Look,
4 give her what you now want to admit, take a look at it and
5 tell me do you still believe you're prejudiced or you still
6 believe it shouldn't?

7 Yes. When you prepare for trial and Mr. Filipovic, it
8 appears to me that you're very conversant with the rules.
9 You know what they're supposed to say, you know what the
10 entirety document is because you use it when Ms. Harper was
11 using the deposition. So I'm not quite sure what the basis
12 for you even telling me why you failed to do it. That's
13 number one. So it has to be excused. It's not just
14 prejudiced. Why didn't you do it and they're not prejudiced.
15 You know, what I don't appreciate and what I have seen
16 throughout this is that it's always the City's fault. They
17 didn't do something. They wouldn't agree to dismissal. They
18 wouldn't agree to continue to trial. They didn't so this.

19 I'm not going to assess, you know, if the City does
20 the -- the City on -- Ms. Harper on behalf of the Sheriff.
21 We're talking about the City on behalf of the Sheriff does
22 something, I'm going to call her on it. But at the same
23 time, I'm going to treat you the same way I'm treating her.
24 And if she keeps trying to say, well, it's the plaintiff's
25 fault. It's the plaintiff's fault and something she did.

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1 I'm not going to let that fly. So the fact that you didn't
2 do it doesn't mean that I may not let you do it now. But
3 please don't say, "Well, Ms. Harper should have known."
4 That's not Ms. Harper's responsibility. It is yours as the
5 plaintiff to have all of your documents available that you
6 want to introduce into trial. And I said that for a couple
7 of reasons, not only because it's my order, it's my standard
8 order for a trial for the same reason that I don't like us to
9 have discovery in the middle of trial because somebody
10 inevitably jumps up and says, "Oh, I never saw this before."
11 So to avoid all of that, everybody is on notice what
12 everybody's putting in. It wasn't her job to call you and
13 say. "Hey, you know, you didn't put the entire document in
14 here and I'm going to object to that." You should have
15 anticipated that.

16 So Ms. Harper, what I am proposing is that Mr. Filipovic
17 shares with you what he intends to introduce us the entire
18 document. You take a look at it, he has to explain to me why
19 he thinks, you know, he'd be excused for not complying and
20 then you're going to have to tell me how you prejudiced.
21 Other than, you know, he didn't comply with my rule. I get
22 that. You know, I get that. But you know, I'm not always
23 going to, "Oh, you didn't comply therefore strictly out."
24 That's not how I do it. I try to be fair to everyone. So,
25 does that in your -- even though you may -- do you think that

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1 that would in some way if you want to look at it, or you're
2 not prepared to address that and then if that's an issue,
3 you're not prepared?

4 MS. HARPER: No, I just want to be certain, Your
5 Honor, that we have an opportunity to review whatever is
6 going to be supplemented or replaced for what is currently at
7 this

8 -- I mean, this trial, there -- this exhibit has been --
9 this document has been broken down in a numerous pages.
10 Let's make sure when it gets on the record, it gets on there
11 accurately, completely and correctly.

12 MR. FILIPOVIC: Absolutely. We already have it
13 ready. In fact, I could email it like now to the joint link
14 that we -- or I could maybe file share it.

15 THE COURT: I'm not going to see, you could share it
16 with Ms. -- Ms. Harper and Mr. Domer or whoever.

17 MR. FILIPOVIC: Okay. Here we go.

18 THE COURT: But she's going to have to, you know,
19 but Counsel?

20 MR. FILIPOVIC: Yes, Ma'am. Yes, Your Honor.

21 THE COURT: You don't blame Ms. Harper because you
22 didn't do it right. I mean, that --

23 MR. FILIPOVIC: No, absolutely, absolutely. If I
24 were in --

25 THE COURT: That's not accepted.

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1 MR. FILIPOVIC: -- if I were in her shoes, I
2 would --

3 THE COURT: You will be doing the same thing.

4 MR. FILIPOVIC: -- I would.

5 THE COURT: And now we're wasted some more time. If
6 not, I'm telling you, if we don't finish today, you guys are
7 going to have to come back and I don't know what to tell you.
8 So, how much time you think you need, 10, 15 minutes. Ms.
9 Harper, I'm not going to -- how much time? Twenty minutes to
10 look at this? Hi, Mr. Hassan, welcome back. I don't know
11 where his counsel is, he'll probably show up at 2:30.
12 But you're going to show up for us to take a break. This
13 what I think we're going to do. Mr. Thornton, you cannot
14 discuss your testimony with Ms. Harper or Mr. Domer or with
15 anything else in that room. And I'm going to ask you, when
16 you come back, did you. Same rules for everybody.

17 Mr. Filipovic, you got to figure out how to get it to
18 Ms. Harper. Ms. Harper, you take what time you need and then
19 when you're done, I guess you email or it says, "Host for
20 MDC." Send a message to the host that says I'm ready to go
21 back on.

22 MS. HARPER: Yes.

23 THE COURT: And they'll email, text me or email me
24 or something so that I can know to come back on, okay?

25 MS. HARPER: Thank you, Your Honor.

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1 MR. FILIPOVIC: Thank you, Your Honor.

2 THE COURT: All right. So we're going to -- I'm
3 going to mute and stop the video.

4 (Off the record; 03:14:27 to 03:17:04)

5 THE COURT: Mr. Offen, we're on -- we're on a break.

6 MR. OFFEN: Thank you, Judge.

7 THE COURT: Okay. All right. Bye.

8 (Off the record; 03:17:11 to 03:41:04)

9 THE COURT: Okay. We're back. It looks like it. I
10 don't need Skype. I don't know if coffee was a good move.
11 Okay. Are we ready?

12 MS. HARPER: Yes, Your Honor.

13 MR. FILIPOVIC: Yes, Your Honor.

14 THE COURT: Okay. So what did we -- what -- what's
15 the City's -- I mean, the Sheriff's position at this point,
16 Ms. Harper?

17 MS. HARPER: Well, we -- we've seen a document that
18 was emailed to us that has the request for admissions, yes.
19 And it has my signature page, as well as our general
20 objections. What the City have done -- what the Sheriff had
21 done was done a combined document in terms of responding to
22 discovery requests, such that the responses to
23 interrogatories would have also been included in that
24 document as with the responses to requests for production.
25 But for purposes of the trial if this -- if the plaintiff is

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1 seeking to admit the requests for admissions into the record,
2 we are okay with the way they are -- they are presenting that
3 document. Meaning we acknowledged it's missing the responses
4 to requests for interrogatories and responses to requests for
5 production, but it encapsulates our general objections as
6 well as a missing signature so.

7 THE COURT: So you want the general objections and
8 the request for admissions with the signature page to be the
9 document that would be admitted?

10 MS. HARPER: In replace of, yes, what we've been
11 looking at here.

12 THE COURT: Admissions and signature page, right?

13 MS. HARPER: Yes, Your Honor.

14 THE COURT: Okay. So the request for admission so
15 that would then be, we would replace what was marked as D --
16 P-22 to P --

17 MR. FILIPOVIC: 23, Your Honor.

18 THE COURT: -- to 34 --

19 MS. HARPER: Correct, Your Honor.

20 THE COURT: -- we would (inaudible) that as 23 only
21 or you want it to still be broken down?

22 MR. FILIPOVIC: No, it can be just 23 only.

23 THE COURT: Okay. And then what --

24 MS. HARPER: Your Honor, you make a good point

25 because we noted that too so what the -- what -- the document

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1 we've seen suggests that they're just replacing P-23 and P-24
2 but they have requests for admissions pieced out between P-23
3 and -- what is it?

4 MR. FILIPOVIC: We put them together in one
5 document?

6 MS. HARPER: No, I know. But as it is now, we're
7 talking about replacing it. Everything from P-23 to P-34 is
8 parsed out requests for admission so the document should be
9 replacing P-23 to P-34.

10 THE COURT: That's what I said. That's what I said.

11 MR. FILIPOVIC: That's what I said.

12 MS. HARPER: Counsel's -- counsel, but no, no. Your
13 cover page to the document you're going to show or submit or
14 show, this is P-23, P-24 only. It's not P-23 through P-34.

15 THE COURT: No, I want the entire, what we
16 understand is going to be your general objections. You're
17 not going to have the response to interrogatories. You're
18 not going to have the response to production of documents.
19 You're going to have the general objections, the request for
20 admissions with the signature page.

21 MS. HARPER: What --

22 THE COURT: Not going to include the interrogatories
23 and request for documents.

24 MS. HARPER: I'm just trying to clarify what -- what
25 that is replacing.

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1 THE COURT: That is replacing anything related to
2 the request for admission.

3 MS. HARPER: Thank you, Your Honor.

4 MR. FILIPOVIC: Correct.

5 THE COURT: 23 to 34.

6 MS. HARPER: Right.

7 THE COURT: Correct? All right.

8 MR. FILIPOVIC: Correct.

9 THE COURT: Now that has to now be -- John, can
10 they, I mean because this is being, typically it's emailed to
11 Ms. Godfrey who emailed it to John and she's not on the line.
12 So, how do we propose we get it so that it gets put on the
13 shared and everybody's on the same page?

14 THE HOST: Could we have the document ready to roll
15 right now? Because in the Zoom chat box at the bottom,
16 there's an option to send a file to me.

17 MR. FILIPOVIC: Okay.

18 THE COURT: "Send the file to the host."

19 THE HOST: Yes. So if you click on -- or whoever is
20 sending it, if you click on chat menu, make sure you see the
21 group chat on the bottom right.

22 MR. FILIPOVIC: Yes.

23 THE HOST: Find host for MDC in that drop down box
24 so you send it to me. You see what I'm talking about?

25 MR. FILIPOVIC: Yeah.

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1 THE HOST: And then that little square to the right
2 of that it says file, I think, if you click on --

3 MR. FILIPOVIC: Yes.

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4      THE HOST:  -- somewhere around there, it will give
5  you the option to upload a file and --
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6 MR. FILIPOVIC: Sure. I'm already there.

7 THE HOST: -- and when I get, I guess, I'll have to
8 take it and save it and then figure out and then you want me
9 to share it on the --

10 THE COURT: Right. Because that would have happened
11 is when the documents came through, they were put into a file
12 so that the that the ESR, who's the host for this is --

13 MR. FILIPOVIC: Yes.

14 THE COURT: -- has access to them. So now we've got
15 to put them in -- add them to the file. Can you add them to
16 the file that you're going to or do you? I don't know.

17 THE HOST: I don't know about on the spot. I'm sure
18 I could ultimately.

19 THE COURT: I know. Just put them so that you have
20 them, save them and then we can figure out how to add them to
21 -- because you're going to have -- those are admitted into
22 evidence and so they're going to be -- whatever is admitted
23 into evidence we've already previously admitted some
24 documents. Your records are going to have those and then
25 they'll just -- I'll just get a copy of those when I do my --

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1 my -- when I review the evidence for a decision. I'll have
2 everything that was admitted because I don't know what's in
3 those files. I don't look at those. I have no clue what you
4 guys sent to my courtroom deputy. Because I haven't seen
5 them yet. We haven't had a trial. So, but I do look at, you
6 know, the notices that were filed like the witness list and
7 those things, I get to look at that. But the actual
8 evidence, no way. I'm not looking at that. So that's how I
9 knew who the witnesses were and what they were going to
10 testify. So that I could figure out well, that's stuff that
11 you typically would file with the court anyway. But as to
12 the actual evidence, huh-huh. So, I will get from whatever
13 you submitted, whatever you use will get put in and I'll get
14 to see that. And so this will replace P-23, the present P-23
15 to 34 will now be replaced with the new P-23 and there will
16 be no 24 through 34, because they will not be considered,
17 correct? Are we all on the same page?

18 MR. FILIPOVIC: Yes, correct.

19 THE COURT: Did you send that to the host?

20 MR. FILIPOVIC: I'm sending it right now, Your
21 Honor. And, okay. I just did. All right. Network. Send,
22 network disconnected, re-send. Okay. It went through. It
23 looks like it went through on my end, Your Honor.

24 THE COURT: Well, we have to see.

25 THE HOST: Yeah. I think I'm seeing it. Okay.

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1 THE COURT: Okay. So, it's still saying 23 to 24.

2 Are we --

3 MR. FILIPOVIC: 23 to 34, it says.

4 THE COURT: Right. So that's going to be replaced

5 with --

6 MR. FILIPOVIC: There it is, it says 23 to 34.

7 THE COURT: Right. But it has everything in it, the

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8  entire --
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9 MR. FILIPOVIC: Yes, the entire --

10 THE COURT: All right.

11 MR. FILIPOVIC: Yes, it does.

12 THE COURT: Okay. So are we going to label this 23

13 to 34 or we're going to just label it 23?

14 MR. FILIPOVIC: That's whatever the court finds

15 easier, we could label it 23. It's easier probably to label

16 it 23.

17 THE COURT: Right. So that P-23 is going to replace

18 23 through 34. Because it's different than what you --

19 it's --

20 MR. FILIPOVIC: Yes.

21 THE COURT: -- some additional. Okay.

22 MR. FILIPOVIC: Yes.

23 THE COURT: John, for the record, we're going to

24 list that is P-23 replacing 23 to 34.

25 (Plaintiff's Exhibit-23 marked for identification)

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1 THE HOST: Correct. So 24 through 34 don't exist
2 anymore.
3 THE COURT: They don't exist anymore.
4 THE HOST: Okay.
5 MR. FILIPOVIC: Correct.
6 THE COURT: Okay. And all we have is 23. Okay?
7 MR. FILIPOVIC: That's perfect.
8 THE COURT: All right. So we have the request for
9 admissions. Is the general -- I can't -- can I scroll down
10 on this? No, I can't. John?
11 THE HOST: I have to do it, what page do we want?
12 We don't want. Well, keep going. We're looking to make sure
13 we have the general objections. She has, okay, and all that.
14 And then the next thing we should have is the request to sign
15 and then, then we have next, what's after that?
16 THE HOST: That's it. 12 pages. There's the
17 signature page technically.
18 THE COURT: Is the admissions in there?
19 MR. FILIPOVIC: Yeah. The admissions are -- all in
20 there, Your Honor.
21 THE COURT: Okay. Hold on. Okay. I see them.
22 Keep going up, John. Okay. Well, we don't have the
23 interrogatories and we don't have the -- are they in there
24 too, and we just ignore?
25 MR. FILIPOVIC: No, they're not in there, Your

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1 Honor.

2 THE COURT: Okay. All right. Now, Ms. Harper, with
3 that being said, do you object to the request for admissions
4 being admitted at this point so --

5 MS. HARPER: Not now.

6 THE COURT: Yes or no?

7 MS. HARPER: No, Your Honor.

8 THE COURT: Okay. So P-23 is admitted as the
9 Sheriff's response to requests for admissions which are
10 deemed admitted to the extent whatever their admissions are
11 in their response. Okay. All right. Now all of that, to go
12 back to Mr. Thornton and I'm hoping I'm pronouncing the right
13 name. You want to ask him some questions with respect to
14 those requests for admissions, correct, Mr. Filipovic?

15 (Plaintiff's Exhibit-23 admitted into evidence)

16 MR. FILIPOVIC: That is correct. Since he's being
17 produced as the 30 B6 witness, yes.

18 MS. HARPER: Objection, Your Honor. He's not
19 (inaudible) for trial as a 30(b)(6) witness.

20 MR. FILIPOVIC: Well, he was deposed as a 30(b)(6)
21 witness.

22 THE COURT: Well, that doesn't mean anything.

23 MR. FILIPOVIC: I think it does, Your Honor. We
24 don't have an opportunity to request a 30(b)(6) witness,
25 other than through the deposition and we did that.

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1 THE COURT: No, you could have -- Ms. Harper, you
2 heard what he said that that's what you produced and that's
3 how he's appearing at trial. Ms. Harper?

4 MS. HARPER: He certainly represented the Sheriff's
5 Civil Enforcement Unit of the Sheriff's Office, Your Honor.
6 And we did not -- when we identified him as a witness which
7 Plaintiff's counsel did not identify him as a witness but we
8 identified him as a witness.

9 MR. FILIPOVIC: Yes, we did. We identified Mr.
10 Thornton. We (indiscern.).

11 THE COURT: When we identified him as what?

12 MR. FILIPOVIC: Witness list. We have --

13 THE COURT: John, can I see the witness list from
14 the plaintiff?

15 MR. FILIPOVIC: Okay. No, she's correct. We have
16 him as -- yeah. We have Office of the Sheriff, custodian of
17 records.

18 THE COURT: Well, he's definitely not the custodian
19 of records.

20 MR. FILIPOVIC: And they didn't -- they didn't bring
21 one, Your Honor.

22 THE COURT: Well, did you ask them to?

23 MR. FILIPOVIC: Yes, we did. We put in the request
24 in the -- in the list. We didn't issue a subpoena.

25 THE COURT: Wait a minute. Wait a minute. You sent

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1 them a subpoena saying -- did you send them a subpoena --

7 THE COURT: No way. No way. Counsel, I don't know
8 how you did a trial, but if I wanted somebody, subpoena them.
9 I don't know what to tell you.

14 THE COURT: Okay. So -- okay. Right. Go ahead
15 then, so --

17 THE COURT: All right. Go ahead.

19 BY MR. FILIPOVIC:

21 A. Yes.

23 A. Yes, I'm here.

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1 the full screen. No longer -- okay. Now, we're back. All
2 right. And Mr. Thornton, during this time period, you did
3 not discuss your testimony with Ms. Harper or Mr. Dormer,
4 right, Mr. Thornton?

6 THE COURT: Okay. All right. Just want to make it
7 clear.

9 THE COURT: Somebody came back? Never mind. Oh,
10 hi, Eileen. Thank you. All right.

12 Q. Okay. I'd like to bring forth the -- on the screen, I
13 believe, that would be City's exhibit, it's the deposition
14 testimony of Mr. Thornton. I think it's City 29. Pull that
15 up.

17 (Background talking)

19 BY MR. FILIPOVIC:

23 A. I thought it was last year.

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1 THE COURT: It says on -- counsel, look at what it
2 says on the top.

3 MR. FILIPOVIC: It's fine.

4 BY MR. FILIPOVIC:

5 Q. You recall, obviously, you do recall?

6 A. I do recall that I am deposed. Yes, I do.

7 Q. Okay. That's fine. And I asked you at that time, sir,
8 that if you believe that, Sheriff's -- you know what, I'll
9 read it.

10 THE COURT: What page we're on?

11 MS. HARPER: I'm going to object. Well, I better
12 object now, Your Honor, because I think this looks like
13 impeachment testimony but it's improper impeachment. I don't
14 -- what was he using this document for?

15 THE COURT: Well, he's direct, on the direct. Can
16 you impeach your own witness on direct? What do are you
17 telling him, you can't? I mean, you didn't call him as of
18 cross, so I don't know.

19 MS. HARPER: I know, I know.

20 MR. FILIPOVIC: All right. That's fine. That's
21 fine. We'll pull, you know, we don't have to do it that way.
22 City's Exhibit 2.

23 (City's Exhibit-2 previously marked for identification)

24 BY MR. FILIPOVIC:

25 Q. And sir, I'm going to direct your attention, Mr.

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1 you know what fax number pertains to the Real Estate Unit?

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1 THE COURT: No, he said he doesn't recognize it. He
2 said he doesn't recognize it. He doesn't say he doesn't
3 remember. He doesn't recognize the number. So --

4 MR. FILIPOVIC: Okay.

5 THE COURT: -- can you use it to refresh his
6 recollection to help him recall if he recognizes. Ms.
7 Harper, can he do that?

8 MS. HARPER: Well, if he's able to with the
9 deposition testimony, maybe he can.

10 THE COURT: I mean, all it means is he shows it to
11 him, he reads it and then he asked him the question again.

12 MR. FILIPOVIC: Yes.

13 THE COURT: I don't know. All right. What do you
14 want him to look at?

15 MR. FILIPOVIC: Okay.

16 BY MR. FILIPOVIC:

17 So let's take a look at the page -- let's see here, page 19.

18 THE COURT: Of his deposition?

19 MR. FILIPOVIC: Oh, I'm sorry. It will be page --
20 let's start with 17.

21 THE COURT: Okay. It's page 17 of the -- well, this
22 isn't his -- no, no, no. We're talking about his deposition,
23 right?

24 MR. FILIPOVIC: Yeah.

25 THE COURT: So that was -- as exhibit what?

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1 MR. FILIPOVIC: That's City-29, I believe.

2 THE COURT: Okay. Okay. Get us to page what 17?

3 MR. FILIPOVIC: 17. Yes.

4 THE COURT: Okay. I don't get to see it because
5 this doesn't come into evidence. He gets to read it to
6 himself. Then you ask if that -- that refreshes. I don't
7 need to see that because it won't come into evidence.

8 BY MR. FILIPOVIC:

9 Q. Okay. Sir, page 19. If you, please would you mind? It
10 says the question is. "Lieutenant Thornton, you --

11 MS. HARPER: Objection.

12 THE COURT: Uh-uh, uh-uh, uh-uh. That's not how a
13 refresh recollection works.

14 MR. FILIPOVIC: Okay. He can read it himself.

15 THE COURT: Refresh recollection means he reads it
16 himself. You show him the document. He reads --

17 MR. FILIPOVIC: I was just -- you're right, Your
18 Honor. You're correct.

19 THE COURT: No.

20 MR. FILIPOVIC: I just wanted to point him --

21 THE COURT: No.

22 MR. FILIPOVIC: -- just to where to start reading.

23 THE COURT: If you want him to -- just tell him the
24 line and the page. You don't have to put it in the record.
25 It doesn't go in the record.

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1 BY MR. FILIPOVIC:

2 Q. Page 19, sir, line 1, all the way through line 25.

3 THE COURT: So you're going to have to tell the --
4 John, when you need him to move it up you know when he finish
5 the page say next keep --

6 MS. HARPER: Your Honor, we have a hard copy we can
7 review, so.

8 THE COURT: Okay. And I don't need to read it.

9 BY MR. FILIPOVIC:

10 Q. And then also, sir, read page 20. And that's it.

11 (Witness reviews document)

12 A. Done.

13 Q. Okay. Sir, having had the chance to review your
14 deposition testimony relevant portion I direct you to, do you
15 now have -- are you now able to tell me whether or not you
16 recognize the number 215-686-3971 as any particular fax
17 number within the Sheriff's Office?

18 A. Yes, that fax number is the Real Estate Division.

19 Q. Okay. And according to -- back to C-2 now.

20 A. Yes.

21 Q. I'll ask you the same question. I asked you at the -- at
22 the deposition, according to the C-2 document does it appear
23 that what you described was this a notice of bankruptcy of
24 Lyndel Topping was transmitted to that number?

25 A. Yes.

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1 Q. And what's the date of such transmission and the time,
2 sir, if you will? It's in the top of the document.

3 A. It says 5/18 -- 5/8/2018 22:25 which is 10:25.

4 Q. Okay. I'm sorry, is that May 8th?

5 A. May 8th, 2018. Correct.

6 Q. Thank you.

7 MR. FILIPOVIC: Your Honor, at this time, I'd like
8 to move this into evidence. This is a Plaintiff's Exhibit --
9 I don't know where up to now, but when it starts back from
10 twenty -- 24.

11 THE COURT: What did you mark as it is what it is?

12 What did you mark it as?

13 MR. FILIPOVIC: Well, this is particularly City's
14 Exhibit. But we -- we have it as our own but we can enter it
15 as -- as you know, City-2, but it's a Plaintiff's Exhibit.

16 THE COURT: Okay. It doesn't -- it --

17 MS. HARPER: Objection, Your Honor.

18 THE COURT: Yes.

19 MS. HARPER: There's no foundation. The document
20 hasn't been authenticated. This is not a document that Mr.
21 Thornton prepared. It's not a document he said he received.
22 It's not a document that -- that the Sheriff's Office
23 received. It's --

24 MR. FILIPOVIC: He just said it was the document
25 that was transmitted to the Sheriff's Office and he read the

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1 date. He said he knows the fax number, what he said all
2 that. And he said in his deposition. I'm not sure what --
3 how -- how she can make that claim?

4 THE COURT: Ms. -- Ms. Harper, can you believe
5 there's no foundation?

6 MS. HARPER: I believe there's no foundation.
7 Moreover, we have to be careful because he was testifying as
8 to a document at his deposition. I'm not sure if it's the
9 same document.

10 MR. FILIPOVIC: Well, you're not sure but he said
11 it's the same document.

12 THE COURT: Well, did we show him to see it was the
13 same document?

14 MR. FILIPOVIC: Your Honor, the deposition has now
15 nothing to do with it. He now said at trial, we used it to
16 refresh his recollection as to the number. And he now said
17 today at trial, that that's the number to the Real Estate
18 Unit. I then asked --

19 THE COURT: Does -- is that the document that he saw
20 before you asked him would have probably made sense would
21 have been, have you seen this? When have you seen it? Did
22 he see it when it came? Did he see it in connection with
23 litigation? When did he see this? That would help me figure
24 this out. But I guess Ms. Harper can ask him that.

25 MS. HARPER: Yeah.

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1 THE COURT: So -- so you're saying there's no
2 foundation because he doesn't -- you know, it says received?
3 Does he have any way of knowing if it was or wasn't?

4 MR. FILIPOVIC: He said it was received, Your Honor.
5 What we're doing --

6 THE COURT: Based on what?

7 MR. FILIPOVIC: Well, that's -- that's not up to --
8 that's not my job to -- to decide. He said he'd seen it.
9 And we're talking about a fax cover sheet. It's very simple
10 document. It says where it was sent, when it was received --
11 it says when it was received, the date, the time.

12 THE COURT: So he's acknowledging that's when it
13 says is?

14 MR. FILIPOVIC: Yes.

15 THE COURT: If not, if you're offering the document
16 to say this is what the -- you've seen it and that's what it
17 says. Only that that's what it says. He doesn't have --

18 MR. FILIPOVIC: You know, I'm offering it, Your
19 Honor. Okay. No, we're offering it, he said it was a notice
20 of bankruptcy. We're offering it as a notice of bankruptcy
21 that the Sheriff's Real Estate Unit received. And that's
22 according to that man's testimony.

23 THE COURT: No, that man's testimony is that that's
24 what it says and that's the fax number. And it says what it
25 said at the top. What personal knowledge does he have that

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1 they actually received it? That's what you --

5 THE COURT: He said on the -- based on what was at
6 the top of the document is what you asked him to read across
7 on the top when it was --

9 THE COURT: -- received and he read it on that.

11 MR. FILIPOVIC: Okay.

17 MR. FILIPOVIC: Okay. I'm sorry. Your Honor, sorry
18 -- is it this court's position that -- that -- this any fax
19 should have been received personally and directly on Mr.
20 Thornton's desk? I mean, he's -- he's here as a
21 representative of the Office of the Sheriff. What are we
22 talking about here? He said that it was received, he
23 identified the fax number.

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1 to have been on that --

2 MR. FILIPOVIC: I don't really care based on what he
3 said what he said. He said it.

4 THE COURT: It is based on what he said. You asked
5 him to, absent reading that on the top of the document, what
6 knowledge --

7 MR. FILIPOVIC: Okay.

8 THE COURT: -- that it was received. And you want
9 me to do something with it that is not what I'm supposed to
10 do with it, counsel. He acknowledged that this is the
11 document. He acknowledged that that was the number. And he
12 acknowledged that at the top of the document, it said it was
13 received by the Sheriff on that date. That's what he's
14 acknowledging.

15 MR. FILIPOVIC: Okay. That's all I'm asking him to
16 acknowledge that --

17 MS. HARPER: I object to the characterization of the
18 testimony there.

19 MR. FILIPOVIC: -- I have nothing more besides that.

20 THE COURT: What Ms. Harper what --

21 MS. HARPER: I object to the characterization of the
22 testimony there. The testimony will stand as versus received
23 versus transmitted.

24 THE COURT: I'm sorry, what?

25 MR. FILIPOVIC: He never said transmitted.

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1 MS. HARPER: The terms characterization of the
2 testimony as received versus transmitted. I've lost the
3 thread here, but I'm -- I'm not sure that there was testimony
4 that that was received by the Sheriff's -- by the Sheriff's
5 Real Estate Unit.

6 THE COURT: I mean, the document says what it says
7 and it means what it means. Now, that's all I can give to
8 it. He can't say anything else.

9 MR. FILIPOVIC: Okay.

10 THE COURT: You wanted the representative of the
11 Sheriff. What else is he going to say? This is what the
12 document is, that's what the document says.

13 MR. FILIPOVIC: Okay.

14 THE COURT: I mean --

15 MR. FILIPOVIC: So let's --

16 THE COURT: -- any. I don't know what to tell you.

17 MR. FILIPOVIC: That's fine, Your Honor.

18 THE COURT: Well, I do not know --

19 MR. FILIPOVIC: We're just creating a record here.
20 The record will speak for itself.

21 THE COURT: Right, exactly. So we don't need to
22 character -- look, he acknowledges he saw the document. He
23 acknowledges that that's the fax number. And he acknowledged
24 that at the top of the document, it says something.

25 MR. FILIPOVIC: Right.

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1 THE COURT: That's --

2 MR. FILIPOVIC: He said -- he said it was received.
3 He said it was received.

4 THE COURT: He said the document, counsel.

5 MR. FILIPOVIC: Yeah, the document, yeah.

6 THE COURT: He said ask him to read the top of the
7 document.

8 MR. FILIPOVIC: That's right. I did.

9 THE COURT: That is it. You didn't actually say, do
10 you know if they received it? He's only talking about the
11 document. I'm not going further than that and that's what
12 you want me to do. That doesn't mean that they didn't --

13 MR. FILIPOVIC: I don't want you, Your Honor, to do
14 anything besides admit it into evidence. It's been
15 authenticated with the testimony that he's already provided.
16 That's all I'm asking. We were moving -- we were moving to
17 admit --

18 THE COURT: Ms. Harper was objecting to your
19 characterization of how you and why you wanted this admitted?
20 And I'm talking --

21 MR. FILIPOVIC: As substantive evidence.

22 THE COURT: Substantive evidence of this document
23 saying x, that's it.

24 MR. FILIPOVIC: Okay.

25 THE COURT: And it may be sufficient to get you

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1 where you want but we need to be careful.

2 MR. FILIPOVIC: Okay. Sure.

3 THE COURT: He never said I acknowledged they
4 received it. He's saying that that document said that and
5 that's what you asked him. And then you re-characterized
6 what he said.

7 MR. FILIPOVIC: I don't mean to put words in
8 anyone's mouth, Your Honor. We have plenty of other --

9 THE COURT: But that's not the point, counsel. The
10 point is don't re-character. She was objecting to your re-
11 characterization of his testimony and his testimony was
12 simply as to what the document said. That's it. I can
13 admit --

14 MR. FILIPOVIC: Yeah, that's fine.

15 THE COURT: -- it for that purpose.

16 MR. FILIPOVIC: That's fine.

17 THE COURT: So she has a right to object to your re-
18 characterization of his testimony. And I want to be clear
19 what I'm admitting. I'm admitting that he said he saw it.
20 I'm admitting that he knows that that's the fax number, and
21 he's admitted that that's what it says at the top which I
22 can't see and I'm assuming I'll look at it. That's it.

23 MR. FILIPOVIC: That's fine.

24 (City's Exhibit-2 admitted into evidence)

25 BY MR. FILIPOVIC:

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1 Q. Let's move to C-3, if you will. There it is. Mr.

2 Thornton, I apologize for delay. Are you still with us?

3 A. Yes, I'm still here.

4 Q. Okay. Sorry, I can't see you there. Sir, we have up on
5 the screen this document that's been pre-marked as City-3.

6 Do you know what that document is, sir?

7 A. It looks like a document from Real Estate.

8 Q. Okay.

9 A. I'm not familiar with it.

10 Q. Okay.

11 THE COURT: You are or are not?

12 A. I am not familiar. This looks like different chains of
13 events that happened. And what --

14 BY MR. FILIPOVIC:

15 Q. Well, what does it say on the top letters that -- you
16 know, can you -- can you elaborate on -- on the -- the big
17 bold words there underneath the parenthesis and the case
18 number?

19 A. It says -- where it says parenthesis? The numbers in the
20 parenthesis?

21 Q. All right. Where it starts, "Sheriff's."

22 A. I'm sorry.

23 Q. Okay. Does -- it say, "Sheriff's return of service,"
24 sir?

25 A. Yes.

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1 Q. Okay. And then below that which case does this appear to
2 pertain to, sir?

4 Q. Yeah, there's a case number on the right above the
5 Sheriff's return of service.

8 Q. Do you see the number?

10 Q. Okay. And is that -- you see the number in the
11 parenthesis that starts with 1707-, you see that?

13 Q. Okay. And now, moving back to the -- the exhibit that
14 was just admitted, which was C, we were just talking about
15 it.

17 MR. FILIPOVIC: C-2. C-2.

19 MR. FILIPOVIC: Yeah, C-2.

21 Q. You see in the middle of the page, sir, where it says,
22 "Book Writ, Book/Writ and that number?

24 Q. Okay. Now is that the same number, sir, that is on -- on
25 C-3, that's in the parenthesis?

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1 A. Yes, it's the same one.

4 A. I'm not familiar with the Real Estate Division. It's --

6 A. I guess, it pertains to a property.

10 MS. HARPER: Objection.

12 MS. HARPER: What -- it lacks a foundation. I don't
13 know (inaudible) what is the -- he hasn't --

15 Q. Has anybody else -- okay. Sir, is this document created
16 by the Sheriff's -- the Office of the Sheriff of
17 Philadelphia?

19 Q. Philadelphia County? Yes, it is. Is that your answer?

22 Q. It's fine. I'm not asking you about any division. I'm
23 sorry to cut you off, but Sheriff of the Office of
24 Philadelphia, is this the entity that created this particular
25 document?

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1 A. Again, I don't work for the Real Estate Division. I
2 don't know who will put this information in.

3 Q. I'm not asking you who put it in? Did I ask you that?
4 No, I did not. Please answer the question asked. I'm
5 just --

6 THE COURT: Counsel -- counsel, his question is --
7 counsel, let's cut to the chase. He doesn't know. He said,
8 I don't work for the Real Estate, so I don't know. But you
9 want him to say he knows when he told you three times, I
10 don't know.

11 MR. FILIPOVIC: No -- no, I do not want him to say
12 anything. I just want to know, does he know --

13 THE COURT: His answer was, I don't know.

14 MR. FILIPOVIC: That's not even what he said, Your
15 Honor. But --

16 THE COURT: I don't know what you want him to say?
17 He doesn't know.

18 BY MR. FILIPOVIC:

19 Q. Well, I'm just -- I just want an answer to the question.
20 And the question is, did somebody, anybody from entire Office
21 of Philadelphia County Sheriff create this particular doc --
22 document to your best knowledge? Yes, or no?

23 A. I don't know, counsel.

24 Q. You don't know.

25 A. I don't work for the Real Estate Division.

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1 Q. So did it --

2 A. I don't know any of the operations of the Real Estate
3 Division.

4 Q. Okay. Is Real Estate Division within the Office of the
5 Sheriff of Philadelphia County?

6 A. Yes.

7 Q. Okay. Okay. All right. Can you read, please, below
8 middle of the page underneath the -- where it says -- well,
9 let's go by the date. There's dates on the left-hand side
10 and then five 5/8/18, 5/9/2018. Can you see what it says
11 there?

12 A. Yes, sir.

13 Q. What does it say?

14 A. "5/8/2018 defending attorney. 5/9/2018 bankruptcy filed
15 in Sheriff's Office."

16 Q. All right. Is there any way that anybody who does not
17 work for the Office of Philadelphia Sheriff in any division
18 or whatsoever could have created that document?

19 A. Could have created the document?

20 Q. Yeah.

21 MS. HARPER: Objection. Calls for speculation.

22 BY MR. FILIPOVIC:

23 Q. I'm sorry. Okay. Calls for speculation. Okay. Who
24 signed this document? Whose signature appears there on the
25 bottom?

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1 A. Jewell Williams, Sheriff.

5 A. That is correct. That is correct, sir.

7 MR. FILIPOVIC: Your Honor, I would move to admit
8 this, he's brought here.

10 MR. FILIPOVIC: Admit this document into evidence.
11 And the basis for admission is just that the witness who's
12 here in his capacity as the representative of the
13 Philadelphia Sheriff has testified that this was signed by
14 the Sheriff.

16 MR. FILIPOVIC: And right. And so him being the
17 representative of the Sheriff's Office, that the document is
18 authenticated. So I move to admit that.

21 MR. FILIPOVIC: He doesn't have to recognize
22 every --

24 MR. FILIPOVIC: He doesn't have -- Your Honor, he
25 doesn't have to recognize. A representative of the entity

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1 doesn't have to recognize every single document that exists
2 in that entity individually. All he has to do is say that,
3 yeah, this document was signed by the Sheriff.

4 THE COURT: It could have been something you
5 created. Counsel, that's --

6 MR. FILIPOVIC: I created?

7 THE COURT: Counsel, that's not the point of the
8 matter. In order for it to be authenticated, he has to
9 recognize it. I'm not saying that you would have created it,
10 but somebody could create a document, put the Sheriff's
11 signature and say, oh, therefore, because it's got his
12 signature, it gets admitted. They have to recognize, say
13 this is part of it. Yes, it's ours and yes it's our
14 signature. He's already said he doesn't recognize and he
15 doesn't know anything about it, other than it has the
16 Sheriff's -- what personal knowledge, and we're going to go
17 back to the rule that you were relying on. It has to be that
18 the person and the evidence is something that the person
19 recognizes and is -- and in supporting that document in
20 support of what they recognize. He doesn't recognize this.

21 MR. FILIPOVIC: Okay. I understand, Your Honor.
22 Fair enough. This is, however, non-physical evidence, this
23 is a business record. So --

24 THE COURT: A business? Well, then who's
25 establishing the business record? What's the basis for their

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1 business record?

2 BY MR. FILIPOVIC:

3 Q. Lieutenant Thornton, do --

4 THE COURT: He just said he does not recognize it,
5 counsel. And if -- even if you --

6 MR. FILIPOVIC: All right.

7 THE COURT: -- custodian of record from the
8 Sheriff's Office, and they said, I don't recognize this. I
9 don't know what this is. I have no familiarity with it. How
10 would he get it other than you said it's got his signature on
11 it? You still have to establish a foundation. You can't
12 just say --

13 MR. FILIPOVIC: And foundation -- Your Honor, let's
14 not forget that we did identify the book and the writ number
15 in the caption of the document it being the same as what he
16 did recognize.

17 THE COURT: That doesn't mean, you could give me any
18 document that has in the record.

19 MR. FILIPOVIC: All right.

20 THE COURT: He said he does not have personal
21 knowledge. He hasn't seen it. And even if he's in the
22 representative of the Sheriff -- if the Sheriff was there,
23 it's his self. And he would say I never saw this. I don't
24 know what this is. How would he --

25 MR. FILIPOVIC: Sure.

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1 THE COURT: -- (inaudible)? Somebody has got to
2 authenticate it. And based on the testimony, I don't see any
3 authentication. Nobody's saying I recognize this document.

4 MR. FILIPOVIC: Uh-huh. Okay.

5 THE COURT: You were trying to get it in on to the
6 business record, somebody's got to say I recognize this
7 document. And yes, it's the documents we keep. And this is
8 -- he doesn't know anything about the Real Estate. There's
9 no way I can admit that from -- based on his testimony. Or
10 maybe the next witness can -- can authenticate it for you.
11 But he can't.

12 MR. FILIPOVIC: Sure. That's fine, Your Honor.
13 Understood.

14 THE COURT: I'm not saying that -- I'm just saying
15 based on this -- this witness, I can't oh, what the heck
16 happened here? Based on this -- oh, my goodness - based on
17 this witness I can't do it. I mean, I --

18 MR. FILIPOVIC: Okay.

19 THE COURT: -- to tell.

20 MR. FILIPOVIC: That's fine.

21 THE COURT: All right, next?

22 MR. FILIPOVIC: We're going to -- let's see here.

23 There's another one I'm just quickly searching for it.

24 THE COURT: Yeah. I mean, there may be another way
25 to do it. I'm just saying this is not the document.

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1 MR. FILIPOVIC: Well, if we had the custodian of the
2 records here.

3 THE COURT: Well, did you tell them to bring him?
4 Did you --

5 MR. FILIPOVIC: No, we -- we didn't subpoena him.
6 But we, you know --

7 THE COURT: Then --

8 MR. FILIPOVIC: -- we thought -- Your Honor, we
9 thought that your order for the emergency trial procedure,
10 you know --

11 THE COURT: Did I say my order tell them to produce
12 -- to just -- with to -- did I say you don't have to comply
13 with the rules for a trial? Did I suspend those? Counsel,
14 even in a regular trial if you want somebody to be produced,
15 you subpoena them?

16 MR. FILIPOVIC: Well, no, that's what you do in the
17 regular trial. But in a trial like this --

18 THE COURT: No, this is a regular trial.

19 MR. FILIPOVIC: Okay.

20 THE COURT: This is a regular trial. The only -- I
21 think, I asked you to do ahead of time was to produce -- to
22 give me a list of your witnesses and a list of the documents
23 so that -- because we were doing this by Zoom.

24 MR. FILIPOVIC: Okay.

25 THE COURT: You think because we're doing this via

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1 want to go on. I'm sorry. Notices. Can we pull up P-11,
2 please?

3 BY MR. FILIPOVIC:

4 Q. Mr. Thornton?

5 A. Yes, sir.

6 Q. Sorry.

7 MR. FILIPOVIC: I'll just ask the Court to scroll up
8 a bit, please.

9 THE COURT: What page? Okay.

10 Q. There it is, P-11. Okay. Mr. Thornton, you had earlier
11 testified that you were with the Civil Enforcement Unit and
12 that there is a particular fax number, that's particular to
13 faxing for -- to that unit. And I'm going to direct you to
14 take a look at the screen here. This is P-11.

15 THE COURT: That's P-10.

16 MR. FILIPOVIC: P-10. Okay, then it can be P-10.

17 It's fine. We can stay on P-10.

18 BY MR. FILIPOVIC:

19 Q. Sir, the fax number to the Civil Enforcement Unit, do you
20 see it on the screen now?

21 A. Yes, I do.

22 Q. Okay. And could you read it for the Court, please?

23 A. 1-215-686-3555.

24 Q. Okay. And what does -- does it -- does the document that
25 you're looking at -- and how many page is that to this

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1 document?

3 Q. Two? Okay. So sir -- so since this is a number to your
4 unit, are you more familiar with the faxes that -- that come
5 in to your unit?

7 Q. Yeah, correspondence that comes to your unit?

9 Q. Familiar as in you may have seen it before.

12 BY MR. FILIPOVIC:

14 A. This here document?

16 A. Only during this period of the trial.

18 represent? Can you tell the Court what -- what it is? What
19 does it look like to you?

21 Q. How many notices of bankruptcy have you seen in your --
22 in your line of work in the Civil Enforcement Unit?

25 Q. At least a 100. Okay. And how many hat were faxed or

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1 submitted by facsimile?

2 A. I really can't tell you the nomination.

3 Q. Okay. More than 10?

4 A. Yeah, I would say than 10, yes.

5 Q. Okay. And is this what they look like, sir, as this P-
6 10?

7 A. Yes.

8 Q. Okay. So do you have any reason in the universe to
9 believe that this particular document P-10 was not, in fact,
10 sent and received by the Real Estate or by the Civil
11 Enforcement Unit?

12 MS. HARPER: Objection. Again, calls for
13 speculation.

14 MR. FILIPOVIC: No, I'm asking him if he has cause
15 to believe that -- that -- that it wasn't received. Cause to
16 believe so he can say specifically yeah, I doubt it because
17 I've seen so many of them and this one is missing this or
18 there is no that, that's what I'm asking. There's no
19 speculation there.

20 THE COURT: Ms. Harper? He said based on what it
21 looked like, what he caused him to believe he didn't -- they
22 didn't receive it.

23 MS. HARPER: Okay. I guess he can answer.

24 THE COURT: Answer the question.

25 A. Now, can you just repeat the question to make sure I'm

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1 answering correctly?

2 BY MR. FILIPOVIC:

3 Q. Sure. Based on all of your experience that you've just
4 told us about, do you have any cause in the universe to
5 believe that this particular document was not sent and
6 received by the Office of the Sheriff Civil Enforcement Unit?

7 A. There shouldn't be a reason it's -- it was sent and
8 received to the office.

9 THE COURT: So what was that, a yes or no?

10 A. Yes. Yes, counsel. Yes, sorry, Your Honor. Sorry.

11 THE COURT: Yes, what?

12 A. Yes, it was received.

13 THE COURT: Yes, it was received, okay.

14 BY MR. FILIPOVIC:

15 Q. Okay, thank you. And can you tell me the date that the -
16 - that it appears to have been received on?

17 A. May 10, 2018.

18 Q. Thank you.

19 MR. FILIPOVIC: Okay, Your Honor, I'm going to move
20 to admit this into evidence now for a substantive evidence of
21 notice -- of Notice of Bankruptcy to Civil Enforcement Unit
22 received on the date that the witness has just testified to.

23 THE COURT: And -- never mind. Ms. Harper, what's
24 your position?

25 MS. HARPER: Objection, Your Honor. He testified

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1 that he's only seen this in the context of trial. I don't --
2 we've established that he's -- he's just testified that -- it
3 looks like it was received, but he -- he's only testified
4 that he's seen this in the context of trial, but I guess --

5 MR. FILIPOVIC: Again, Your Honor, Ms. Harper
6 elevates this burden to anyone in the sheriff's -- or him
7 having to see every single notice in order to authenticate
8 it, that's not how authentication works. He -- he --

9 THE COURT: Authentication is based on his -- the
10 witness's knowledge.

11 MR. FILIPOVIC: Correct. And he just said that --

12 THE COURT: And he acknowledges that -- okay, you
13 came or use the --

14 MR. FILIPOVIC: Yeah. It was received.

15 THE COURT: All he said was he's -- he's saying in
16 the context of what he's looking at, appears to have been
17 received.

18 MR. FILIPOVIC: That's right. Of context that he's
19 looking at is --

20 THE COURT: So only that -- so it only -- it's not
21 based on his personal knowledge. It just says, this is the
22 -- this is the fax number, but it says, based on that must
23 have been received, that's the only --

24 MR. FILIPOVIC: Yeah.

25 THE COURT: I'm going to give to it. He hasn't seen

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1 it before that. I don't know what you want me to do with it,
2 counsel. You want me to give him some, just like your
3 witness personally said, I got. I saw this. I handled this.
4 He's --

5 MR. FILIPOVIC: Your Honor, it -- I'm sorry to
6 interrupt.

7 THE COURT: So let me go what authentication says.
8 Let's look at the Rule 9 or was it 901?

9 MR. FILIPOVIC: Yeah, person with knowledge doesn't
10 have to be -- person with knowledge --

11 THE COURT: It has to be personally acknowledged
12 that he -- counsel, you're trying to -- you're trying to say
13 person with knowledge. He saw this for the first time. All
14 he's saying is this document says what it says, based on my
15 review of this for a trial, not had he not been shown this
16 document before trial, how would he authenticate it? So
17 you're --

18 MR. FILIPOVIC: By having seen, by having knowledge,
19 Your Honor, a knowledge would be all the many, many notices
20 that he's seen and he said that there is -- he has no reason
21 in the universe to believe that this particular Notice of
22 Bankruptcy wasn't received.

23 THE COURT: Counsel?

24 MR. FILIPOVIC: Yes, Your Honor.

25 THE COURT: Not all -- all it says is that I've seen

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1 it. I don't -- based on what I'm seen, I -- I don't believe
2 it wasn't received. That's the thing.

3 MR. FILIPOVIC: Correct.

4 THE COURT: He's not saying this is the exact
5 document because I saw it before or I would -- all he can say
6 is, yes, the document you showed me says what it says, and I
7 don't believe it should saying anything else.

8 MR. FILIPOVIC: He said that I don't believe that it
9 wasn't received. He says it was received.

10 THE COURT: How does mean -- counsel, I will give
11 the weight which is, I saw this document in connection with
12 trial. He never saw it before.

13 MR. FILIPOVIC: That's fine, Your Honor. The --

14 THE COURT: So the whole point of the matter is, you
15 want him to say and you want me to find that this is a
16 document received by the sheriff and that they -- it is what
17 it is and it said what it said. I can only say that he's
18 saying, yes, you showed me this based on what you showed me.
19 It appears that the sheriff, this is went to the sheriff.
20 That's the -- and that's not what -- let's see what 901 says,
21 Rule 901. Let's go to 901.

22 MR. FILIPOVIC: Your Honor, the representative of
23 the -- again, of the corporate entity or an entity, any
24 business entity doesn't have to have seen every single
25 document, the custodian of records doesn't have -- hasn't

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1 seen every single document.

2 THE COURT: Well, the custodian of record goes and
3 assembles it and says, "This was in our records. I can
4 testify that this was in our records and this is what we kept
5 in the ordinary course. We have it." Okay? This thing, you
6 showed me a document, this what it looks like. (Indiscern.)
7 he knows you made it up. I mean, that's the point of the
8 matter. That's why we want authentication that the document
9 is testimony of a witness with knowledge. The only knowledge
10 he has is what you showed him. And you kind of --

11 MR. FILIPOVIC: No, he has a little more knowledge
12 than that. He recognized the fax number as his unit.

13 THE COURT: Okay. But counsel --

14 MR. FILIPOVIC: He can read that it was received
15 successfully.

16 MS. HARPER: He didn't create the document. He has
17 only seen the document in the context of this trial. I don't
18 see how he could have authenticate a document and that it's
19 not his duty to do so. There's nothing -- we talked about
20 this records custodian. That's not. Not presenting him as
21 the records custodian, what he -- what he --

22 THE COURT: Even as a representative, let's back
23 off. As a representative of the sheriff, or even if the
24 sheriff was here. Let's back off. If the sheriff was here
25 and you'd asked the sheriff, "Did you see this?" And the

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1 Sheriff says, "I've never seen this. I don't even know what
2 it is. But I saw it in connection with preparation for
3 trial. It looks like something that was sent to my office."
4 Does that mean that it was sent to his office and they
5 actually can authenticate it?

6 MR. FILIPOVIC: No, no.

7 THE COURT: But saying so. So I'm --

8 MR. FILIPOVIC: Then I lay more foundation, I'm
9 sorry. I lay more foundation --

10 THE COURT: The foundation is that he's --

11 MR. FILIPOVIC: -- by asking him how many -- how
12 many Notices of Bankruptcy has he seen. He said over a 100.

13 THE COURT: That doesn't mean that -- does that mean
14 he saw this one?

15 MR. FILIPOVIC: It doesn't have to be this one. I
16 asked him another way, Your Honor. I asked him another way.

17 THE COURT: Counsel --

18 MR. FILIPOVIC: But that's fine.

19 THE COURT: He has not seen -- there is no testimony
20 that if we had the sheriff here today, that you can
21 authenticate this with the sheriff because the sheriff would
22 have to say, "I've seen this, got it, I recognized it." Now
23 you can have it in first. You can argue that, you know, you
24 can make your argument that, you know, this -- this is what
25 it is.

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1 But for me to authenticate it, I don't see how I do
2 that. All he said was -- and you can use that was, you know,
3 he said he saw a document. I don't see how I authenticate
4 that, because again, if the sheriff was here, if the sheriff
5 represent and you asked the sheriff, "Have you ever seen
6 this?" and the Sheriff said, "No, I've never seen this. Yes,
7 it says, it went to my office. I think it was sent,
8 appears," how then would that authenticate the document if
9 the sheriff said I never saw it other than in preparation of
10 trial. Authentication is to say, this document is what it
11 says it is. That's why you authenticate. And this guy is
12 only saying, I saw it at trial. The document says what it
13 says, okay, that's not authentication.

14 MR. FILIPOVIC: That's fine, Your Honor.

15 THE COURT: I think (indiscern.) saw it.

16 MR. FILIPOVIC: That's fine.

17 THE COURT: So I mean, I don't know what you want me
18 to do. I --

19 MR. FILIPOVIC: Admit into evidence, Your Honor.

20 THE COURT: I'm not admitting it because it's not
21 authenticated.

22 MR. FILIPOVIC: Okay. We'll move on.

23 THE COURT: I can take his testimony. You can say
24 that he testified that he recognized something, and this is
25 the number and then you can put your witness on to say I sent

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1 it there. There's a way to get there, but you can't ask me
2 to circumvent the rules.

3 MR. FILIPOVIC: I'm not asking you to do that, Your
4 Honor.

5 THE COURT: It's not authenticated. He doesn't
6 recognize it. It's something he only saw in trial. He
7 doesn't know if the sheriff has it. He doesn't know any of
8 that other than what this document says. And he agrees that
9 it says what it says. That's not authentication.

10 Again, if the sheriff was there testifying, you couldn't
11 get him to authenticate it because he never saw it and
12 doesn't even know if it came there. He can admit what it
13 says. That's not authentication. Denied. Next.

14 MR. FILIPOVIC: Okay.

15 BY MR. FILIPOVIC:

16 Q. Mr. Thornton, just to cut to he chase here. Did you
17 personally see any of the -- do you -- did you ever
18 personally see -- well, let me strike that. Did you
19 personally review any of the notices of the bankruptcy in the
20 Civil Enforcement Unit?

21 A. Did I personally review the notice of bankruptcies?

22 Q. Yeah, the notices of the bankruptcy.

23 A. When they come through?

24 Q. Yeah.

25 A. Yeah, look at them, yes.

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1 Q. Okay. But you didn't look at this particular one,
2 correct?

4 Q. Okay. Mr. Thornton, is there -- in the -- let's just see
5 this, sorry. What would be the -- are you familiar with
6 Officer Taylor, Jetaria Taylor?

8 Q. Okay. Are you familiar at all with any of her work in
9 connection with serving any notices on the particular
10 property that's in question here today?

12 MR. FILIPOVIC: What does Ms. Taylor do --

14 MR. FILIPOVIC: Yeah.

18 BY MR. FILIPOVIC:

22 A. Yes.

25 particular matter at this particular property, 142 South 62nd

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1 MS. HARPER: Wait, I mean, I think it's a asked and
2 answered. Objection, asked and answered.

3 THE COURT: Counsel?

4 MR. FILIPOVIC: Okay.

5 BY MR. FILIPOVIC:

6 Q. Mr. Thornton, let's go back to your -- were you in
7 preparation for this trial before you took your deposition?

8 A. Yeah.

9 Q. Yeah. Like in February or in --

10 A. Yeah, sorry, yes.

11 Q. Okay. Yes? You were preparing for the trial and --

12 A. That I'm not sure. I'm clear exactly --

13 THE COURT: Okay. Wait, wait, wait a minute, wait a
14 minute. Wait a minute. One, you both can't talk. So maybe
15 you'd might ask him what does he mean as preparation for
16 trial, counsel, that might make it easy for everybody.

17 BY MR. FILIPOVIC:

18 Q. Yeah, what do you mean by preparation for trial?

19 A. Well, it was understanding to me that Sergeant Taylor was
20 involved with something with this particular property and
21 there was a bankruptcy and then there was a suit against the
22 Philadelphia Sheriff's Office and there were multiple
23 attempts to the property. So that's what my knowledge of
24 Jetaria Taylor and this particular property, multiple notices
25 were sent to the property, things of that nature.

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1 Q. Okay. That's what I want to ask you about. So I believe
2 that you took your deposition on December 19th, 2019, correct
3 me if I'm wrong.

4 A. Yes, it was at -- sometime in the end of last year.

5 Q. Okay. So I ask you then, I'm going to ask you now, do
6 you know which deputy went out to serve the -- the writs and
7 notices to vacate on this property?

8 A. Yes, it was Sergeant Taylor, Jetaria Taylor.

9 Q. Okay. Do you know how many times?

10 A. Two times.

11 Q. Two times. When you say two times, you mean on two
12 occasions or two -- two notices?

13 A. It was two occasions that she would, had been at the
14 property.

15 Q. Okay. And do you know when the first occasion that she
16 was in the property? No, strike that. What is it -- what --
17 do you know what the -- Deputy Taylor did when she got there?
18 How many notices did she serve?

19 MS. HARPER: Objection. This is -- we have -- we
20 have Jetaria Taylor here. Sergeant Taylor is here.

21 MR. FILIPOVIC: Right.

22 MS. HARPER: Calling for speculation because, you
23 know, hearsay, I mean, (indiscern.).

24 MR. FILIPOVIC: No, it's -- it's not hearsay to ask
25 what she does -- how many times she served the notice.

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1 THE COURT: The next question is, what she did when
2 she got there.

3 MR. FILIPOVIC: Yeah. Which -- that's right.

4 THE COURT: How would he know if he wasn't there and
5 that's what objecting to, calls for speculation.

6 MR. FILIPOVIC: Well, he did know in his deposition,
7 Your Honor. Did you mean you'd like him to read?

8 THE COURT: Well, then ask him at his deposition.
9 You know --

10 MR. FILIPOVIC: Ask him at his deposition?

11 THE COURT: I mean, just use his -- counsel, we're
12 not going to play games here.

13 MR. FILIPOVIC: No, I'm not.

14 THE COURT: Refresh his recollection. He said he --

15 MR. FILIPOVIC: He hasn't said he didn't know yet.
16 I can't do that.

17 THE COURT: Counsel, she's objecting because you
18 said speculation and the fact that --

19 MR. FILIPOVIC: I didn't say speculation.

20 THE COURT: She's --

21 MR. FILIPOVIC: She said speculation.

22 THE COURT: You know what, I'm going to take a break
23 right now. We're going to take a break because I already see
24 what's going on and I'm getting (inaudible) --

25 (Off the record)

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1 said that Sergeant Taylor went out there twice, correct?

2 A. That is correct, sir.

3 Q. What leads you to believe the Civil Enforcement Unit.

4 Q. And could you elaborate on that practice?

5 A. Sure. Once we receive a writ of possession, the deputy
6 assigned to a particular area where that property is, they
7 will go to that property to give notice to the occupant. And
8 then a second occasion is when we have a final eviction
9 notice or a final date that the eviction is going to occur,
10 the deputy will return to that property.

11 Q. Okay. And each time that the officer goes out, how many
12 notices in total are actually served upon property or the
13 occupants?

14 A. When we go out, two.

15 Q. Okay. And do they send the notice by mail at all?

16 A. That is the third time, you're correct.

17 Q. So each visit to the property entails at least three
18 letters or notices, if you will, to the -- the occupant?

19 A. Yes, one each occasion, yes.

20 Q. Okay.

21 THE COURT: Oh, so let me -- that's three documents
22 that are left on each occasion?

23 MR. FILIPOVIC: I think he said, two are left and
24 one is mailed out.

25 A. But it's the same document, Your Honor.

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1 THE COURT: Okay. So -- but I just want to know how
2 many documents. I know it's the same one.

3 A. Yes, ma'am.

4 THE COURT: Documents are left at the property and
5 one's mailed out?

6 A. That is correct, yeah.

7 BY MR. FILIPOVIC:

8 Q. Now, Lieutenant Thornton, you said the same documents but
9 same document is only -- is that same document both occasion
10 that she goes out or did you make a distinction between the
11 first time and the second time?

12 A. Well, it's two different reasons and it's -- it's the
13 document is a little different. The first document is notice
14 to, I believe, it says notice of vacate and then it says the
15 eviction -- the eviction date were -- with the actual date
16 that we'll come out and do the eviction.

17 Q. Okay. So the second one is somewhat more imperative or
18 more strenuous, if you will?

19 MS. HARPER: Objection.

20 BY MR. FILIPOVIC:

21 Q. The eviction note -- the eviction notice is, contains the
22 actual date when sheriff will come to seize the property,
23 correct?

24 A. I heard an objection.

25 MS. HARPER: Yeah, objection.

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1 THE COURT: What is the objection, Ms. Harper?

2 MS. HARPER: He finished it. I don't know if we're
3 still on the same question or he moved on, but I was
4 objecting because it was a leading question that assume facts
5 not in evidence and it was already --

6 THE COURT: But I think he corrected it by
7 rephrasing it. I can say it was more -- he rephrased it
8 because --

9 MS. HARPER: Yeah.

10 THE COURT: -- something and then he said, well,
11 it's different. It has date of the eviction. So I think
12 that may have -- so the question is, is the first document is
13 different from the second and how is it? I think that that's
14 what he was asking.

15 MR. FILIPOVIC: Yeah, that's the question.

16 A. The first document is letting the occupant know that they
17 have to leave the property, give them notice, has information
18 on it, and let them know they have to leave the property.

19 The second document is stating that this is the date you have
20 to leave the document, you have to leave the premises, the
21 property.

22 Q. Okay. And each of these arrives or is delivered three
23 times, correct?

24 A. I didn't say -- no, I didn't say that, counselor.

25 Q. Okay. I thought you said that when -- when the officer

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1 goes out, they bring the same notice and they post one on the
2 door and then what did they do?

3 MS. HARPER: Objection, mischaracterization.

4 THE COURT: He never said, they post it on the door,
5 counselor. He said that --

6 MR. FILIPOVIC: Okay. I'm sorry.

7 THE COURT: So come on. Let's -- let's --

8 MR. FILIPOVIC: I thought he did.

9 BY MR. FILIPOVIC:

10 Q. Mr. Thornton, let's start with the initial time that the
11 officer go out. What did -- what would she do?

12 MS. HARPER: Objection. Asked and answered.

13 MR. FILIPOVIC: Well, we can -- without the ability
14 to redirect.

15 BY MR. FILIPOVIC:

16 Q. Does the officer ever post any notice on the door?

17 A. It can happen, yes.

18 Q. It can happen?

19 A. Yes.

20 Q. Isn't it procedure that you just said that they -- you
21 just testified that they post one on the door, they mail one
22 out, correct?

23 THE COURT: He never said post. I'm looking --

24 MR. FILIPOVIC: Okay.

25 THE COURT: Can we read that back. This is why I

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1 wrote. Maybe I, you know, a little bit today I'm not hearing
2 things what he says. The deputy goes to the property and
3 they go out on the first and they notice that there's a
4 notice of -- of the eviction. Two documents are left at the
5 property and one is mailed. He said left. He did not say
6 post, he said two left at the property.

7 MR. FILIPOVIC: Okay.

8 THE COURT: And the second time they go out, the
9 notice has the date of the eviction. Nowhere in my notes do
10 our record reflect that he used the word posted at any time.

11 MR. FILIPOVIC: Okay. Fair enough. Thank you, Your
12 Honor.

13 BY MR. FILIPOVIC:

14 Q. When you say left at the property, do you know how they
15 leave them at the property?

16 A. They can hand deliver -- yes, I do.

17 Q. Please elaborate?

18 A. They can hand deliver it to the occupant, knock on the
19 door, occupant comes to the door, the deputy identify who
20 they are and why they're there. Hand them the document and
21 let them know that is a writ of possession and they will have
22 time to leave the property and leave the document. If the
23 occupant does not answer the door, at that time, they will
24 post it on the property and leave it in the mail slot.

25 Q. Oh, so they leave on at the mail slot, they post one on

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1 sorry for the prolonged back and forth, Mr. Thornton, I -- I
2 don't have any more questions for -- for this witness.

3 THE COURT: Any cross examine, Ms. --

4 MS. HARPER: Yeah, Your Honor, I'm going to reserve
5 the right to call Captain Thornton back to the stand in the
6 sheriff's case-in-chief, if need be.

7 THE COURT: Okay. So no cross examine. Reserved
8 for your case-in-chief. All right. What time is it? 4
9 o'clock. Do we think we can get --

10 MR. FILIPOVIC: What time?

11 THE COURT: -- sergeant, is it sergeant and I
12 apologize if I got the wrong description.

13 (Witness leaves stand)

14 MS. HARPER: I think it's Sergeant Taylor now --

15 THE COURT: Yes.

16 MS. HARPER: -- just at the moment.

17 THE COURT: We think we can get through her for an
18 hour?

19 MR. FILIPOVIC: Honestly, you know --

20 THE COURT: Let's --

21 MR. FILIPOVIC: -- Your Honor --

22 THE COURT: Well, how long do you --

23 MR. FILIPOVIC: -- to be honest --

24 THE COURT: I don't know how long you think is going
25 to take, Ms.-- been an hour?

1 MR. FILIPOVIC: Well, we have only 50 minutes left
2 and --

3 THE COURT: Fifty minutes, 4:10. We got 50 minutes.
4 Let's start.

5 MR. FILIPOVIC: Yeah. Okay.

6 THE COURT: Ms. Harper, let me ask you a question.
7 Do you have to pay the witness overtime if we go past 5
8 o'clock?

9 MS. HARPER: You know, that's -- yes, apparently we
10 do, Your Honor.

11 THE COURT: Right. I don't have to worry about
12 paying the Marshall's overtime. They left. I used -- they
13 have to worry about 6 o'clock, letting them leave and I was
14 cognizant. We shall see. Let's -- let's start.

15 MR. FILIPOVIC: We'll call Ms. Taylor to the stand,
16 Officer Taylor.

17 THE COURT: John, do we have to pay you overtime?

18 MR. JOHN: Oh, I was --

19 THE COURT: And Ms. Eileen?

20 MR. JOHN: I was making sure she's ready. I saw
21 somebody moving paperwork away from --

22 MS. HARPER: That's us. I mean, if I may ask, may
23 Captain Thornton safely be dismissed for the day as the day's
24 winding down?

25 THE COURT: Right. Because you didn't cross

1 examine. There's no redirect.

2 MS. HARPER: No.

3 THE COURT: Mr. Filipovic?

4 MR. FILIPOVIC: Well, I don't see where I already
5 said that I was finished questioning Mr. Thornton.

6 THE COURT: Okay.

7 MR. FILIPOVIC: I don't mind at all.

8 THE COURT: All right. Then you can leave. It was
9 nice, a pleasure to have you in my courtroom.

10 MR. THORNTON: Thank you, Your Honor. Have a good
11 evening.

12 THE COURT: You too. So at least we only have one
13 witness, we have to pay overtime if we go past 5:00.

14 MS. HARPER: That's what I'm thinking and thank you
15 for raising that issue. Sorry -- sorry Captain Thornton.

16 MR. THORNTON: All right. Thank you. You have to
17 pay me?

18 THE COURT: No over time for you, I'm sorry.

19 MS. HARPER: All right.

20 THE COURT: Mr. Filipovic, you can -- oh, wait a
21 minute, do we swear her in? Did I miss that part?

22 THE CLERK: We didn't do it yet. Mr. Domer, can you
23 unmute the -- that computer?

24 MR. DOMER: This one?

25 THE CLERK: Yes, please?

1 MR. DOMER: Well, actually, because our computers
2 are side by side. If I was to unmute for --

3 THE CLERK: It doesn't matter, okay.

4 THE COURT: All right. So put her next to Ms. --

5 MS. HARPER: Yeah. Would you like us to

6 (indiscern.)

7 THE COURT: Just let her -- there we go.

8 MS. HARPER: Okay.

9 THE COURT: Okay.

10 MS. HARPER: All right. And move around, then I'll
11 be out of the picture.

12 THE COURT: Okay.

13 MS. HARPER: I'll move to the back seat.

14 THE COURT: Okay.

15 JETARIA TAYLOR, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Thank you. Could you please state and
17 spell your name for the record?

18 MS. TAYLOR: Jetaria, J-E-T-A-R-I-A, last name
19 Taylor, T-A-Y-L-O-R.

20 THE CLERK: And could you please state your address
21 for the record?

22 MS. TAYLOR: 1501 Arch Street, Philadelphia, P.A.
23 19110, I believe.

24 MS. HARPER: I think we're 102.

25 MS. TAYLOR: 102.

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1 THE CLERK: 102, sounds good. Thank you.

3 BY MR. FILIPOVIC:

6 A. I'm a sergeant with the Philadelphia Sheriff's Office.

8 A. I'm at the sheriff's office for almost seven years.

10 A. I'm currently assigned to family court.

13 A. Yes.

15 A. I was assigned to the Civil Enforcement Unit.

18 A. Yes.

21 A. We're responsible for enforcing court orders which
22 includes writ of possessions, writ of executions,
23 attachments, any type of court orders.

25 A. Yes, that's a part of the writ of possessions which

Taylor - Direct

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1 includes evictions.
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6 A. Yes.

10 A. Sure. So we go out to the home. The first time that we
11 go out to the home, we put up a notice to vacate which is a
12 21-day notice, informing the occupant that they have a 21
13 days before an eviction. We leave two notices at the
14 physical property and then one notice gets mailed. We go out
15 a second time where we do the actual eviction notice which
16 gives the day and time of the eviction. And we also leave
17 two physical copies at the property and we send another one
18 in the mail.

21 A. Physically two, and one mailed.

23 A. In a vehicle.

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1 A. It's a personal vehicle.

2 Q. Okay. And are you armed when you go out?

3 A. Yes.

4 Q. Okay. And are you in plain clothes or street or -- are
5 you wearing your uniform as you are today?

6 MS. HARPER: Objection. Assumes facts not in
7 evidence.

8 MR. FILIPOVIC: Sorry?

9 THE COURT: What's the question?

10 MS. HARPER: We're assuming (indiscern.) uniform and
11 she may have had in her prior position. She's not in the
12 same position.

13 MR. FILIPOVIC: I -- I'm sorry, I don't follow. I
14 asked -- the question was maybe you didn't hear my question.

15 THE COURT: The question was, did you go in the same
16 uniform you're in today and Ms. --

17 MR. FILIPOVIC: Okay. I see what's she's saying.
18 She's wearing family court. Okay. Retract that, strike
19 that.

20 BY MR. FILIPOVIC:

21 Q. When you used to serve writs and not with the family
22 court, when you used to serve writs and eviction notices, did
23 you go in the field in your uniform, sheriff's uniform or
24 plain clothes?

25 A. Plain clothes.

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1 Q. And I'm sorry, you said, you were armed or unarmed?

2 A. Armed.

3 Q. Armed? Armed in plain clothes. And forgive me for
4 asking and perhaps, you know, we -- there's reasons you may
5 not want to answer, but when you wear your gun, is it a gun
6 that you're armed with, a handgun?

7 A. Yeah.

8 Q. Are you armed with a handgun?

9 A. Yes.

10 Q. Okay. I assume -- am I correct to assume that's the only
11 weapon you're armed with?

12 MS. HARPER: Objection. Where is this going, and
13 how much further --

14 MR. FILIPOVIC: Well, what do you mean? Well, you
15 mean that --

16 THE COURT: She's asking where --

17 MR. FILIPOVIC: What's going to damages.

18 THE COURT: -- how is it relevant.

19 MR. FILIPOVIC: It's going to damages -- yeah, Your
20 Honor, if -- if a man sees an armed, you know, person in
21 plain clothes --

22 THE COURT: What man saw.

23 MR. FILIPOVIC: Well, if -- if --

24 THE COURT: Testimony -- the testimony was that, Mr.
25 -- the debtor didn't see anything.

Taylor - Direct

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1 MR. FILIPOVIC: The debtor no --

2 THE COURT: That the debtor didn't see --

3 MR. FILIPOVIC: -- no that -- Lyndel Topping no,
4 that Barry Whyte didn't see anything, not the Lyndel Topping
5 didn't see anything.

6 THE COURT: There's no testimony that he did.

7 MR. FILIPOVIC: He can't talk, Your Honor, it's
8 deductive reasoning.

9 THE COURT: Then I'm supposed to assume that he did?
10 Counsel, I'll let it for what its worth, I'll allow it for
11 what it's worth.

12 MR. FILIPOVIC: Okay.

13 BY MR. FILIPOVIC:

14 Q. Ms. Taylor, you know, we don't have to answer that. You
15 were armed with a handgun when you go in the field, correct,
16 and you have plain clothes?

17 A. Plain clothes, sir.

18 A. Okay. Fair enough. Do you go alone or -- in the field
19 or do you go with a partner?

20 A. Alone.

21 Q. Okay. Do you remember do you always go alone or you
22 never with a partner?

23 A. I go with a partner doing evictions.

24 Q. Oh, okay. And when you --

25 A. (Indiscern.).

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1 Q. Oh, okay. So am I correct then to interpret that -- that
2 not the eviction notice but when the date comes, that's only
3 eviction notice and you were to go and actually kick people
4 out, if you will, that's when you go with a partner, is that
5 correct?

6 A. Yes.

7 Q. Okay. Ms. Taylor, were you the officer that served the
8 notices or for possession and eviction notices on the
9 property at issue in this litigation?

10 A. Yes.

11 Q. Okay.

12 MR. FILIPOVIC: And at this time, Your Honor, I'd
13 like to recall the Exhibit-C-14.

14 BY MR. FILIPOVIC:

15 Q. Ms. Taylor, that's C-14, okay. Do you recognize this
16 document?

17 A. Yes.

18 Q. And can you tell the court what it is?

19 A. It is a 21-day notice to vacate.

20 Q. Okay. Do you know -- can you tell us anything -- is this
21 the notice -- is this one of the notices that you served at
22 the -- at the debtor's property?

23 A. Yes.

24 Q. Do you recall how you served this particular notice? Was
25 it in -- in mailbox or was it on the door? Did somebody

Taylor - Direct

1 answer the door?

5 Q. Okay. Let the record reflect that deputy or -- I'm
6 sorry, Deputy Taylor now?

8 MR. FILIPOVIC: Deputy Taylor. Sergeant?

10 A. Sergeant.

18 BY MR. FILIPOVIC:

22 A. I don't know the actual date.

25 MS. HARPER: I'm sorry. Just bear with us. We're

Taylor - Direct

1 trying to get our hard copy in front of us.

4 THE COURT: Here is return of service to the Real
5 Estate sale. That's what that is.

8 THE COURT: Or was that P-36?

10 MR. FILIPOVIC: No, that's P-35.

12 MR. FILIPOVIC: Just one second, Your Honor, I'm
13 sorry. There are two exhibits that are very much alike
14 but -

19 MR. FILIPOVIC: No, I'm looking for internal log
20 that was -

22 MR. FILIPOVIC: -- testified to at length. I'll
23 find it in -- in just a second here. I do apologize.

25 MR. FILIPOVIC: Yeah, it's on the list. I -- I

Taylor - Direct

1 just --

2 THE COURT: John, can you search and find for log,
3 does it say log on it? What does it say?

4 MR. FILIPOVIC: It says, internal record and I
5 should know this off top -- I just -- I'm having a brain
6 freeze, Your Honor, I'm sorry. I've seen this --

7 THE COURT: It's okay.

8 MR. FILIPOVIC: -- a million times.

9 THE COURT: John, any luck with finding it? Did it
10 have the word log on it?

11 MR. FILIPOVIC: It should.

12 THE CLERK: Sorry, Judge, I'm having a hard time
13 unmuting and multitasking.

14 THE COURT: Oh, okay. Oh, you mean, answering me,
15 I'm sorry.

16 THE CLERK: Yeah.

17 THE COURT: Okay. Don't worry about it. I can see
18 you too. I apologize.

19 THE CLERK: Because you know, I'm always afraid, I'm
20 going to like close something I shouldn't.

21 THE COURT: Right. Okay.

22 THE CLERK: Does it say log on top?

23 THE COURT: I don't know. That's what we're looking
24 for, log.

25 THE CLERK: Oh, what's this about?

Taylor - Direct

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1 THE COURT: That's a fax, and it's not a fax sent to
2 -- notices, maybe we should be going in the other direction.

3 THE CLERK: There's a call log, that's not it?

4 THE COURT: No. Unless that what he -- I don't
5 think, I think he's --

6 MR. FILIPOVIC: No, it's not the call log.

7 THE COURT: Regarding the -- postings and all that
8 other stuff. Maybe we should be going the other direction
9 because it seems to me that this is all about --

10 MR. FILIPOVIC: I feel so bad that you guys are --

11 THE CLERK: Okay.

12 MR. FILIPOVIC: -- now doing my -- this is -- I
13 should know this.

14 THE CLERK: Well, I knew it would be the opposite of
15 whatever way I went. So I figured what's that --

16 THE COURT: It's got to be the other way.

17 MR. HARPER: I think it's (indiscern.) about it but
18 I'm not sure.

19 THE COURT: Okay. Because that's P-4, P-3, go
20 ahead. We all, we might as well go -

21 MR. FILIPOVIC: P- 4, let me see P-4, I'm sorry.

22 Can we -- no, no, that --

23 THE COURT: P-4 we stipulated.

24 MR. FILIPOVIC: We stipulated. We stipulated to all
25 that. Your Honor, may I take like a one minute recess just

Taylor - Direct

1 to find this thing?

4 (Off the record)

6 MR. FILIPOVIC: Yes, it is, Your Honor. It is City-
7 4.

9 THE COURT: Okay. Wait a minute, wait, we come some
10 down, counsel because we don't -- I can only see the bottom.
11 I mean, Ms. -- I mean -- okay. Sir.

15 THE COURT: We can see you. You're here.

17 BY MR. FILIPOVIC:

23 A. I'm ready.

25 A. Yes.

Taylor - Direct

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1 Q. And what is it -- what is it though?

2 A. It's a service event report.

3 Q. Okay. And there is a service event details that's like
4 third underline prong, it says, the date of 5/10/2018, do you
5 see that?

6 A. Yes.

7 Q. Okay. Could you please read for the record, what does it
8 say there?

9 A. "Deputy Sergeant Taylor being duly sworn according to
10 law, posted one, true and attested copy of the written writ
11 of possession upon real estate located at 146 South 62nd
12 Street, Philadelphia, P.A. 19139, it's 21-day notice posted."

13 Q. Okay. Thank you. Mr. -- can we scroll down just a
14 little? Thank you. Thank you. That's good. Ms. Taylor,
15 did you enter this note?

16 A. Yes.

17 Q. You did? Okay. And where did you enter it. What is
18 this screen that we're looking at?

19 A. It's a part of the Jewel system.

20 Q. Uhm-hum. And what is Jewel System?

21 A. It's a -- a pretty much a system where we keep all of our
22 things that need to be enforced. So any of our, like court
23 documents that we needs to enforce, they go to the system.
24 We get assign -- we get a assigned those documents from this
25 system.

Taylor - Direct

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1 Q. Okay. So you created this document and --

2 A. No.

3 Q. -- you authored it? No?

4 A. I didn't create the document.

5 Q. Okay. Well -- I'm sorry. I'm going to rephrase that.

6 You inserted the note, correct?

7 A. Yes.

8 Q. Okay. And you inserted the date of May 10th, 2018,

9 correct?

10 A. 2018, yes.

11 Q. Yeah. Okay. And does that correctly and accurately

12 represent your actions on that day?

13 A. Yes.

14 Q. Okay.

15 MR. FILIPOVIC: Your Honor, I'm going to move to

16 admit this into evidence. It's been authenticated by Ms.

17 Taylor, who now is the creator of the note that's here. And

18 we would like it to be entered. Well, yeah. I would like to

19 enter it. And you know what, if I may, I'm going to catch

20 myself -- well, never mind. We'd like to enter it into

21 evidence at this time.

22 THE COURT: Any objection, Ms. --

23 MS. HARPER: Objection. Yes, Your Honor.

24 Unfortunately, as to authentication. I don't think we've

25 gone through the right steps here just yet.

Taylor - Direct

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1 THE COURT: Okay. What steps do you think are
2 missing?

3 MS. HARPER: Well, I don't know what --

4 MR. FILIPOVIC: I think I know. I think I know,
5 Your Honor. If I -- I can --

6 THE COURT: All right. Then just go ahead, counsel.

7 MR. FILIPOVIC: Okay. Thank you.

8 BY MR. FILIPOVIC:

9 Q. Ms. Taylor, in your regular course of duties when you
10 were assigned to this particular unit, Civil Enforcement, was
11 this a regular part of your job to make the notes of such
12 nature?

13 A. Yes.

14 Q. And does the Office of the Sheriff keep and maintain
15 these types of notes in their system, as you said?

16 A. Yes.

17 MR. FILIPOVIC: So at this time, Your Honor, I'd
18 like to move this into evidence as business record exception
19 to the hearsay rule and --

20 THE COURT: I know that Ms. Harper is going to
21 object. And I can tell -- Ms. Harper, why are you objecting?
22 Ms. Harper?

23 MS. HARPER: Yes.

24 THE COURT: Are you objecting?

25 MS. HARPER: I am, Your Honor.

Taylor - Direct

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1 THE COURT: And tell me why? Counsel, you haven't
2 picked up on why she's going to object?

3 MR. FILIPOVIC: No.

4 THE COURT: The rest of the document. Did she put
5 them on there?

6 MS. HARPER: He's only asked her about one portion
7 of the document.

8 THE COURT: So that portion can be admitted, but the
9 rest you haven't asked her about. I could just say yeah and
10 stop, but counsel, I'm not trying to prejudice you. Ask her
11 about the entire document so I can --

12 MR. FILIPOVIC: I thought I was asking about the
13 entire document, but that's fine.

14 THE COURT: You didn't. You only asked her about
15 the first entry.

16 MR. FILIPOVIC: All right.

17 THE COURT: And she said she put it in. I don't
18 know if she put the second or the third in. Come on.

19 MR. FILIPOVIC: All right.

20 BY MR. FILIPOVIC:

21 Q. Did you put in the name that says, "Unknown Occupants?"

22 Did you put that in there? Do you know what that is?

23 A. No.

24 THE COURT: Where is that at? Oh, okay.

25 MR. FILIPOVIC: Yeah, okay.

Taylor - Direct

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1 BY MR. FILIPOVIC:

2 Q. And how about the address?

3 A. No.

4 Q. Okay. And what about your name there, Jetaria Taylor?

5 A. Yes.

6 Q. Yes, okay.

7 MR. FILIPOVIC: So Your Honor, you know, we have --

8 THE COURT: What about the rest, counsel?

9 Possession date. Did she put that in there?

10 BY MR. FILIPOVIC:

11 Q. Did you write the possession date?

12 THE COURT: The entire document.

13 BY MR. FILIPOVIC:

14 Q. Did you write the possession date, 6/25/18 there?

15 A. No.

16 Q. No? But it's --

17 A. No.

18 Q. This is -- okay. Okay. And what about, "cancelled per
19 Defendant bankruptcy," did you write that?

20 A. No.

21 Q. Okay.

22 MR. FILIPOVIC: Your Honor, I'm still going to move
23 to admit this, because she testified that this is the type of
24 document that the Defendant keeps -- that she creates this in
25 the regular course of business and that it's kept by the

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1 Jewel system of the Office of the Sheriff in their regular
2 course of business. And so I think it meets the exception.
3 And it's admission of the party opponent. Otherwise --

4 THE COURT: How can she -- she's just a -- she's not
5 the representative. How is that an admission? Never mind, I
6 need to stop.

7 MR. FILIPOVIC: She's a sergeant. She's a sergeant
8 with the --

9 MS. HARPER: It's hearsay within hearsay, Your
10 Honor.

11 THE COURT: What's hearsay within hearsay?

12 MS. HARPER: She did not make those entries and
13 there's multiple entries she didn't make. She has testified
14 as to one entry she made on this document herself.

15 THE COURT: Okay. So --

16 MS. HARPER: I don't think that makes this document
17 admissible through Deputy Taylor -- through Sergeant Taylor,
18 pardon me.

19 MR. FILIPOVIC: I disagree, Your Honor. I think we
20 have ample evidence and testimony. She swore in it. And it
21 is what it is. It's close --

22 THE COURT: That's not how it is what it is.
23 Counsel, you have -- there's a way to do this, you're just
24 not doing it.

25 MR. FILIPOVIC: Okay.

Taylor - Direct

1 THE COURT: You want her -- she can tell you -- she
2 can authenticate the document as to what she put on there,
3 okay?

4 MR. FILIPOVIC: Right. Right.

5 THE COURT: Now, that's what she can do. Anything,
6 you are going to have to lay a foundation on how the rest can
7 get in. I can put in with only that portion that she admits
8 she did. I don't know what else to tell you, but you --

9 MR. FILIPOVIC: Okay, that's fine. That's fine,
10 Your Honor. We can admit just the portion that she said that
11 she put in, the date and the note.

12 THE COURT: And -- well, she put in the date and she
13 put in the note that -- can you move that down, John?
14 There's a lot of other information that says -- you know, I
15 guess we don't want that in there, because somebody else did
16 something and did something else, and entered stuff.
17 Whatever. All right.

18 MR. FILIPOVIC: Plaintiff is -- yeah. Plaintiff is
19 amenable to redacting all of the stuff that's on the bottom.

20 THE COURT: Right. Because it says entered by
21 somebody else on a different date. So I don't know what to
22 tell you. I don't know what any of that stuff means. The
23 only thing we can admit -- John, can you move that down?
24 John?

25 MR. FILIPOVIC: Move it how?

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1 THE COURT: Move it -- yes. Okay. I guess I'm
2 calling it down. I guess it's up. That she put in -- what
3 did you say you put in, Ms. Taylor?

4 A. So my name and then the deputy part, that's a template.
5 So I just click on it and then my information pops up.

6 THE COURT: And then you said that you posted it on
7 May 10th?

8 A. Yes.

9 THE COURT: Okay. And the rest you didn't.
10 Anything else, you don't know what.

11 A. No.

12 THE COURT: Okay. All right, so we'll -- Ms.
13 Harper, any objection to just that portion being admitted as
14 being on the document, or do you think it has to be done as a
15 whole? I don't know.

16 MS. HARPER: I think the record is clear enough as
17 to our intent for allowing this to be admitted at this time.
18 But I'll rely on the record.

19 THE COURT: So the record is only that the date, the
20 word posted, and that first paragraph that says she posted
21 it, the 21 day notice, and that's it.

22 MR. FILIPOVIC: That's fine.

23 (City's Exhibit-4 admitted into evidence)

24 THE COURT: Okay.

25 MR. FILIPOVIC: That's really all we're trying to

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1 introduce anyway. Okay.

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1 refresh your recollection, if you don't remember, I will
2 direct you to your -- again, to your deposition testimony.
3 And let's go to -- now, I have the mini-transcript that was
4 submitted by the City. So I'll have you read pages -- this
5 is page 5, but you know, there's pages 17, 18, 19, and 20
6 there. If you want to take a minute and read it. And let me
7 know if that --

8 THE COURT: So she's looking at the pages at the
9 top? What page is she looking at?

10 MR. FILIPOVIC: Well, there is -- it's on page --

11 MS. HARPER: (Indiscern.).

12 THE COURT: Just use the pages at the top.

13 MR. FILIPOVIC: Yeah, so --

14 THE COURT: What page is at the top that you want
15 her to --

16 MR. FILIPOVIC: 18, 19, and 20. They're pretty
17 small. Maybe just 20.

18 THE COURT: Okay.

19 MR. FILIPOVIC: Maybe just 20. It'll do -- maybe
20 you'll remember if you just look at page 20.

21 THE COURT: Okay.

22 (Witness reviews document)

23 MR. FILIPOVIC: And 19.

24 THE COURT: All right. Go back up to --

25 MR. FILIPOVIC: 18, I'm sorry. Bottom of the page

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1 A. Yes.

2 Q. Okay. Let the record reflect that Sergeant Taylor has
3 identified the notice as having personal knowledge of having
4 posted it on the property. And okay. So let's go now to
5 City-16. Ms. Taylor, do you recognize this document?

6 A. Yes.

7 Q. And can you tell the Court what it is.

8 A. It's a 21-day notice, which would have been given out on
9 the first visit.

10 Q. Okay. Still a part of the first visit. Okay. Do you
11 remember if this particular notice was -- well, you posted
12 this. Did you post this notice?

13 A. I'm not sure if this one was posted or not.

14 Q. Okay. Yeah. So do you recall ever anybody answering the
15 door when you went out there?

16 A. No.

17 Q. Okay. And do you recall how you -- how did you go about
18 posting it? Are you leaving it the property? Did you --
19 what did you do to post it?

20 A. I would have taped it to the door.

21 Q. To the front door?

22 A. Yes.

23 Q. Okay. Let's go to City-17. What about this particular
24 document? Have you seen it before?

25 A. Yes.

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1 Q. And what does it represent?

2 A. This is the final notice that would be posted the second
3 time, and it shows the actual date of the eviction and the
4 time.

5 Q. Okay. Did you deliver this notice?

6 A. Did I post it? Yes.

7 Q. Do you remember how you posted this particular notice?

8 A. On the door with tape.

9 Q. What color tape did you use? Do you recall?

10 A. Clear tape.

11 Q. Clear tape. Okay. You sure you didn't use red tape?

12 A. Sir, we don't have red tape.

13 Q. You don't have red tape. Okay. Just give me a second.

14 Okay. I'm going to direct your attention back to your
15 deposition testimony. And page 10 this time.

16 MS. HARPER: Counsel, can you identify the City --

17 MR. FILIPOVIC: City-30. It's her testimony. It's
18 her deposition.

19 BY MR. FILIPOVIC:

20 Q. And Ms. Taylor, I'm going to read from your deposition.

21 MS. HARPER: Objection.

22 MR. FILIPOVIC: What's the objection?

23 MS. HARPER: The declarant's available. Again, what
24 is -- this is --

25 MR. FILIPOVIC: Well, I'm allowed to impeach her

Taylor - Direct

1 with some testimony. That doesn't matter that she's on
2 direct. I mean, she testified before and now -- you know,
3 now she's testifying under oath at trial. So I'm -- I don't
4 know where you get the rule that it only applies to cross.
5 She's a direct witness and I'm allowed to impeach her with a
6 prior -- any witness can be impeached, right?

7 MS. HARPER: Okay. If your representation -- I just
8 thought we were going with the failure to recall something.
9 But if your testimony -- but if you're trying to use the
10 testimony for impeachment. Okay. Go ahead.

11 MR. FILIPOVIC: Yeah. Yeah.

12 BY MR. FILIPOVIC:

13 Q. So I'm going to read this and maybe I'm just
14 misunderstanding this, but it says on page 9, "Do you use any
15 color coding?" It says, "Just with some tape." It says,
16 "No." "Are they pre-printed? What are the colors that are
17 on these notices?" "The notices are by colors, it depends.
18 We were using, I think it was red, the notices to vacate, but
19 we didn't have it anymore, so we just did photocopy of that."
20 But they were supposed --

21 MS. HARPER: Objection.

22 MR. FILIPOVIC: Okay.

23 BY MR. FILIPOVIC:

24 Q. Okay. Now, when you were talking about red, is that the
25 tape that's red or the notice is red? Which -- just if you

Taylor - Direct

1 could clarify that for me.

3 Q. Okay. Okay. I understand. But the tape was clear.

5 MR. FILIPOVIC: Let me just review my notes for
6 further questions. Can we take a short one? A very short
7 one.

9 MR. FILIPOVIC: Yeah. I know, that's kind of why I
10 wanted -- I hope she's all right. So let's take a short --

13 MR. FILIPOVIC: Judge.

15 MS. HARPER: Was it recording, Your Honor?

23 MR. FILIPOVIC: I'm sorry. I don't mean to waste
24 anybody's time, Your Honor. I just wanted -- I know --

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1 word red stuck in your head and you thought it was something.
2 I get it. So if you want to take some time to consult with
3 Mr. Dunne about whether there is any more questions, you get
4 to do that. Okay?

5 MR. FILIPOVIC: Thank you, Your Honor.

6 THE COURT: All right. So we're going to put
7 everybody on --

8 MS. HARPER: I think she muted herself. I think
9 you're muted, Your Honor.

10 MR. FILIPOVIC: No, she's back.

11 THE COURT: I'm back. I'm here. I was like
12 everybody go on mute, except Mr. -- but then we can hear
13 them. Can we hear them if -- if we go on mute and they talk,
14 can we hear them?

15 MR. FILIPOVIC: Your Honor, I can call Mr. Dunne on
16 the phone.

17 THE COURT: All right.

18 MR. FILIPOVIC: All right.

19 THE COURT: All right. But you have to go on mute
20 and Mr. Dunne has to go on mute so we can't hear you guys.

21 (Pause in the proceedings)

22 MR. FILIPOVIC: Well, we're back on.

23 THE COURT: Everybody back on?

24 MS. HARPER: Yes, Your Honor.

25 MR. FILIPOVIC: Back on. Okay. Okay.

Taylor - Direct

1 BY MR. FILIPOVIC:

2 Q. Just two more -- a few more questions, Ms. Taylor. You
3 had said that you went out there and nobody answered the
4 door, correct?

5 A. Yes.

6 Q. Neither time?

7 A. No.

8 Q. Nobody answered.

9 A. No.

10 Q. Okay. Now, I want to ask you about how you approached
11 the door. Well, did you knock? Did you ring a doorbell? Do
12 you recall?

13 A. Knock.

14 Q. Knock. Do you recall there being a door and a screen
15 door, or just a front door?

16 A. I can't recall.

17 Q. Okay. Did you happen to look inside? Was there a way to
18 see inside at all?

19 A. I don't recall.

20 Q. How hard do you usually knock when you knock?

21 A. Hard enough for someone to hear.

22 Q. How big is that property; do you recall?

23 A. It was a --

24 Q. I mean, is it a one-story, two-story?

25 A. I'm not sure.

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1 Q. Okay. Do you use the full fist to knock or just your
2 knuckles?

3 MS. HARPER: Objection as to relevance.

4 MR. FILIPOVIC: Well, it's to a man who's -- well,
5 she can -- it's relevant as to the type of --

6 MS. HARPER: (Indiscern.) represented that the
7 debtor is deaf and mute. I just -- at this point, I think
8 we're just getting argumentative with the witness. I don't
9 understand.

10 MR. FILIPOVIC: No, no. I'm just asking how hard
11 she knocked, that's all.

12 THE COURT: And she's objecting on the basis of
13 relevance. What's the relevance?

14 MR. FILIPOVIC: Well, I want to hear if she -- the
15 relevance is as to how she made her presence at the premises.
16 I'm trying to determine that. But that's fine. We don't --
17 outside of that, if the Court won't allow it, I'll --

18 THE COURT: Counsel, I'll allow it for what it's
19 worth. I'm not sure how it's going to do anything.

20 MR. FILIPOVIC: Okay.

21 THE COURT: The Plaintiff is deaf. He wouldn't have
22 heard.

23 MR. FILIPOVIC: Right, right.

24 THE COURT: So I'm not quite sure what this is going
25 to. And I've had no evidence that he was there. There's no

Taylor - Direct

1 really bad headache.

2 THE COURT: I've already had one, which is why I had
3 to recess a couple of times. But do you have any other
4 witnesses for today?

5 MR. FILIPOVIC: No, we didn't list anybody else.
6 That's -- we're done.

7 THE COURT: Do you rest? You rest then?

8 MR. FILIPOVIC: We rest. We're moving all the
9 evidence that we've already moved --

10 THE COURT: Well, I've already admitted -- what was
11 admitted -- John, can you read back to me what's been
12 admitted?

13 THE CLERK: Read back to you?

14 THE COURT: Yes, so we're all on the same page.

15 THE CLERK: I think we have C-14, C-15, C-16, and
16 when I say C, I mean City, sorry. City-17, City-18, City-19.
17 Those were all with the first witness. Then we went on to
18 there's a City-26, and then there's the new P-23, which takes
19 over the old 23 through 34. There was a couple that were not
20 admitted. And then the last one that was admitted, C-4.

21 THE COURT: What's C-4?

22 MS. HARPER: That was the Service Event Report, Your
23 Honor.

24 THE COURT: With the --

25 MR. FILIPOVIC: Service -- yeah, at 4.

1 THE COURT: Right. With the limited information.
2 All right. Anybody have -- those were all. Did we miss any?

3 MS. HARPER: I don't believe so, Your Honor.

4 MR. FILIPOVIC: I thought we -- Your Honor, I
5 thought was admitted C-2.

6 THE COURT: Go back to my notes. What's C-2?

7 MR. FILIPOVIC: It's the fax that -- the first fax.

8 THE COURT: I don't think so. Unless it was a fax
9 -- maybe we did. I don't know.

10 MR. FILIPOVIC: I'm pretty sure we did.

11 MS. HARPER: It was admitted in the same fashion
12 that C-4 was admitted, just simply -- I think counsel may be
13 correct on that.

14 THE COURT: Hold on. Hold on.

15 THE CLERK: So according to my checklist C-2 and C-3
16 were brought up during the second witness, and I don't think
17 they were admitted. Same with P --

18 MR. FILIPOVIC: No, C-2 was admitted.

19 THE CLERK: Same with P-10.

20 THE COURT: Wait a minute. I'm going to go look
21 through my notes, because I wrote whether it was or wasn't.
22 So this would have been -- but C-2 was Ms. Taylor?

23 MS. HARPER: No, Your Honor, that was Captain
24 Thornton.

25 MR. FILIPOVIC: No, lieutenant.

1 THE CLERK: Thornton. Yeah, the second witness.

2 THE COURT: Wait the second, I'm sorry. Never mind.

3 So Mr. Thornton, and I'm not giving him his due title, but

4 let's start with Mr. Thornton. We did Mr. Whyte.

5 MS. HARPER: Your Honor, may I dismiss Sergeant

6 Taylor? I hate to interrupt you there, but it is 5 o'clock,

7 it's after 5 o'clock and City counsel has rested.

8 THE COURT: No, she's rested and she can go. You

9 can reserve her for yours.

10 MS. HARPER: Thank you, Your Honor.

11 THE COURT: Thank you very much, Sergeant Taylor.

12 A. Thank you.

13 MR. FILIPOVIC: Thank you, Sergeant.

14 THE COURT: All right. So let's go to -- okay,

15 we've got D-3 was not admitted.

16 MR. FILIPOVIC: There's no D-3.

17 THE COURT: D-3 was no foundation, not admitted, or

18 was it C-3. Did I call it C when it should have been C-3.

19 MR. DUNNE: Exhibit C-3.

20 MR. FILIPOVIC: Yeah, you're right. But C-2 was.

21 THE COURT: Let me get to C-2.

22 THE CLERK: Now, C-2 was brought up right before

23 that and I thought they were both not admitted for the same

24 reasons, Your Honor.

25 THE COURT: Well, let me go back. C-3.

1 MR. FILIPOVIC: No.

2 THE COURT: C-3 was -- I'm just calling them -- is
3 that a C or a -- C, yeah. C, all right. City Exhibit, it
4 was C-2? City.

5 MR. FILIPOVIC: Yeah.

6 THE COURT: From Mr. Dunne. He didn't recognize it.
7 He didn't know what it is.

8 MR. FILIPOVIC: What? We admitted it.

9 THE COURT: No. No foundation.

10 MR. FILIPOVIC: No, Your Honor. We admitted C-2 for
11 what it was worth. That he recognized, even Ms. Harper
12 agrees that it was admitted for the truth --

13 THE COURT: Well, I don't see any notes. Ms.
14 Harper, you agree it was admitted for the limited purpose
15 that he recognized it?

16 MS. HARPER: The only note -- is it all right if Mr.
17 Domer speaks at this point, because it was his note. I don't
18 want to read his note.

19 THE COURT: What did you say?

20 MR. FILIPOVIC: What do you mean his note?

21 MR. DOMER: Permission to speak, Your Honor. In my
22 notes, I have that City-2 was admitted for what it says. It
23 was presented to the witness who said --

24 MR. FILIPOVIC: Yeah.

25 MR. DOMER: -- this is what it says, and that's what

1 you recognize, but not for receipt.

2 THE COURT: That it said what it said.

3 MR. DOMER: Correct.

4 MR. FILIPOVIC: Yeah.

5 THE COURT: But not that it's proof that they
6 received it or anything. It's just this is a document. And
7 I don't even think it was for that it was authenticated, just
8 that this document is what it is.

9 MS. HARPER: Yes, Your Honor. That's our position.

10 THE COURT: I'm not -- it's admitted for the sole
11 purpose -- I do have admitted for the sole purpose --

12 MR. FILIPOVIC: Thank you.

13 THE COURT: -- that this was the document and
14 nothing else, that they have no proof that they actually
15 received it. No proof that he knew anything. Okay. C-3 was
16 not admitted. I denied 3 again. Okay. So are we missing C-
17 3?

18 MR. FILIPOVIC: No. C-3 is not admitted. We're
19 good on that.

20 THE COURT: Okay. C-2. C-2.

21 MR. FILIPOVIC: C-2 has been admitted for limited
22 purpose.

23 THE COURT: Okay. All right. Anything else you
24 believe we missed on that list?

25 MR. FILIPOVIC: No, I believe that's it.

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1 THE COURT: Okay. John, do you want to go over that
2 list again just so we're all on the same page?

3 THE CLERK: Okay. C-14, C-15, City-16, City-17,
4 City-18, City-19, City-26, the new P-23, and then now we just
5 said C-2 was in.

6 THE COURT: For a limited purpose.

7 THE CLERK: Okay. And then C-4.

8 THE COURT: Again, only a portion. Is that the one
9 where the --

10 MR. FILIPOVIC: Yeah, the portion. Correct.

11 THE COURT: Only her portion.

12 MR. FILIPOVIC: Yeah, only her portion.

13 THE COURT: Okay. And that's it for the -- the
14 Plaintiff rests?

15 MR. FILIPOVIC: The Plaintiff rests, Your Honor.

16 THE COURT: Okay. So then Ms. -- what's that Mr.
17 Dunne, P-10. What is that supposed to mean?

18 MR. FILIPOVIC: P-10, okay. Let's see.

19 MR. DUNNE: I have P-10 as not being admitted.
20 Maybe I misunderstood something.

21 MR. FILIPOVIC: Let me take a look.

22 THE COURT: What did we talk about P-10? Who talked
23 about P-10?

24 MR. FILIPOVIC: Thornton, I believe.

25 THE CLERK: Yeah, it was Captain Thornton, the

1 second witness.

2 THE COURT: Right. I don't see it yet.

3 MR. DUNNE: It was the last one --

4 THE COURT: Ten. P-10, only doing it -- only that
5 it was -- I have not admitted. Am I missing something?

6 Maybe I'm missing it. Did I say it was admitted?

7 MS. HARPER: No, Your Honor, not per my notes.

8 THE CLERK: I'm not sure what Mr. Dunne's trying to
9 show us.

10 THE COURT: I don't know. It is what it is.

11 MR. FILIPOVIC: P-10.

12 THE COURT: It was only -- he looked at it during
13 trial.

14 MR. FILIPOVIC: No, yeah.

15 THE COURT: No, it wasn't admitted.

16 MR. FILIPOVIC: It was not admitted. No, it was not
17 admitted.

18 THE COURT: No, I don't know what's -- no. All
19 right, next. That's everything. Okay. So you rest,
20 correct?

21 MR. FILIPOVIC: Yes, Your Honor.

22 THE COURT: Ms. Harper?

23 MS. HARPER: Yes, Your Honor.

24 THE COURT: Does the City plan to call any rebuttal
25 witness -- opposition to the motion -- an adversary, rather?

1 Opposition to the adversary.

2 MS. HARPER: At this point, Your Honor, the City
3 would move for involuntary dismissal for 7041/41(b) of the
4 Federal Rules of Civil Procedure and the Federal Rules of
5 Bankruptcy Procedure.

6 THE COURT: And you want dismissal on the what? 40?

7 MS. HARPER: 7041(b).

8 THE COURT: Wait a minute. Hold on.

9 MR. FILIPOVIC: I think she's talking about that
10 Plaintiff has failed to --

11 THE COURT: I know what she is, but I just want --
12 I --

13 MS. HARPER: (Indiscern.) directed verdict, but I
14 think the appropriate context in an adversary is 7041.

15 THE COURT: Okay. Hold on. 7041(b)(1), you
16 believe?

17 MS. HARPER: Let me double check.

18 THE COURT: Okay, hold on.

19 MS. HARPER: Involuntary dismissal at (b), 7041(b).

20 THE COURT: Okay. So do you believe that I should
21 dismiss -- oh my goodness, come on page. Mr. Filipovic, you
22 have a headache. I've had a headache since (indiscern.),
23 which why I've been taking breaks. When my sugar drops, it's
24 like, never mind. 7041(b), where are we at? 7041, which
25 one, Ms. --

1 MS. HARPER: 7041(b), involuntary dismissal, Your
2 Honor.

3 THE COURT: Okay. So the Plaintiff fails to
4 prosecute or -- well, this says it fails to prosecute or
5 comply with these rules or a Court order, a Defendant may
6 move to dismiss the action or any claim. So this is for
7 failure to prosecute.

8 MS. HARPER: Yes, Your Honor. Or I could -- you
9 know, Your Honor, case law suggests that the actual stance of
10 the -- that a motion for a directed verdict is only related
11 to a trial by jury. So case law does suggest that it is
12 Federal Rules of Procedure 41(b), pursuant to what you
13 seek --

14 THE COURT: Dismissal for failure --

15 MS. HARPER: Yes, Your Honor.

16 THE COURT: Okay. Yes. I mean, if you're saying --
17 yes, it doesn't say -- it's not involuntary dismissal. I
18 mean, I know that people move for judgments.

19 MS. HARPER: Yes. And I'll move however Your Honor
20 wishes me to couch it. This is my understanding, having done
21 some research. But we are moving for a directed verdict,
22 essentially. Whether --

23 THE COURT: Right, but you believe that the
24 appropriate is on the 7041(b), because there's no equivalent
25 under these civil rules for a -- because it's not a jury

1 trial, right?

2 MS. HARPER: Yes, Your Honor.

3 THE COURT: Okay. I don't know what you call it. I
4 know what you're asking for. I've just got to figure out do
5 I have the authority. It may actually be judgment in favor
6 of -- I don't what it's called. I get what you're asking.
7 I'm not going to rule on that today, obviously. I have to go
8 back and look at the elements, look at what they gave me.
9 I'm not in a position to say whether they met their burden or
10 not. I'm not about to do that today.

11 What we're going to do today is we're going to set a
12 continued trial date to -- Ms. Harper, do you intend to put
13 witnesses on?

14 MS. HARPER: Your Honor, it's a tough call for me to
15 make. As you say, it's the end of day. Everybody's getting
16 headaches. But I will need to set a date just to reserve
17 that right, yes.

18 THE COURT: Okay. And the only witnesses I'm --
19 let's be clear. I'm not hearing any witness that wasn't on
20 that list for today.

21 MS. HARPER: Of course.

22 THE COURT: We are not doing that.

23 MS. HARPER: No, Your Honor.

24 THE COURT: (Indiscern.) think that this is some
25 opportunity for them to put some more evidence in, to --

1 MR. FILIPOVIC: No, Your Honor.

2 THE COURT: -- more documents. The trial was for
3 today. We're not -- that's it. All right.

4 MS. HARPER: (Indiscern.) date, and then of course
5 let the Court know immediately if we change our approach on
6 that. I haven't really had a chance to confer at length with
7 my co-counsel here.

8 THE COURT: Okay. Let's pick a date that gives me
9 enough time to figure out whether I can rule on your motion
10 that the Debtor didn't meet its evidentiary burden is what
11 you're saying.

12 MS. HARPER: And, Your Honor, also, this was my
13 initial -- I intended to initially ask --

14 MR. FILIPOVIC: And Your Honor, we do get to oppose
15 that, right? I can make argument now or about how we did
16 meet the burden, and I would only direct --

17 THE COURT: All right. Well, wait. Before we get
18 there, I'm just asking Ms. Harper whether we wanted a date
19 for a continued date. I'm not doing anything on that yet.
20 Okay. Go ahead, Ms. Harper. And I may -- and I'm probably
21 going to ask the parties to give me something in writing on
22 what the standard is and what evidence there. I'm not
23 (indiscern.) to that.

24 All right, Ms. Harper, what do you want for -- what were
25 you saying about a date?

1 MS. HARPER: It sounds like we would need to request
2 transcripts from the hearing from today in order to fully
3 brief the matter.

4 THE COURT: Yeah.

5 MS. HARPER: So the date -- I'm not sure. We
6 haven't had to request a transcript in quite some time, and
7 certainly not during this time frame.

8 THE COURT: It doesn't matter. We get them on time.

9 MS. HARPER: Okay.

10 THE COURT: The pandemic is not stopping anything.
11 John, is it?

12 THE CLERK: What's that? I'm sorry, about the --

13 THE COURT: Requests for transcripts are on --

14 THE CLERK: I think they're still working fine.
15 Yeah. They're still on time.

16 THE COURT: Okay. So, Ms. Harper, what you're going
17 to do is you're going to file an appropriate motion for
18 whatever verdict you're calling this: directed verdict,
19 whatever. I don't know what the proper term is. And you're
20 going to put in in support of that, and they're going to
21 respond.

22 MS. HARPER: Yes, Your Honor.

23 THE COURT: That's the only way I'm handling it.
24 I'm not going through that and trying to figure this out on
25 my own. And it's not that I'm trying to figure it out on my

1 own, it's the parties -- you know, you're making a motion.
2 You file it of record. You put all your -- this is the
3 standard. This is the evidence. Why you believe it's not
4 sufficient. They're going to respond this is the standard
5 and we've -- and this is the evidence we've given in support.

6 MS. HARPER: And, Your Honor, at this point, we
7 would not request to move forward with trial until the motion
8 is resolved. So --

9 THE COURT: Well, what I'm going to do is put out
10 longer. Put it out far enough. That's --

11 MS. HARPER: Okay. I don't want to waive the right
12 to -- you know, there's some case law that if you continue
13 with trial, then you sort of waive the whole --

14 THE COURT: All right.

15 MS. HARPER: (Indiscern.) is if our request is
16 denied and we have a continued trial date, I still may choose
17 not to go forward at that time, from a procedural
18 perspective, and there's a reason why.

19 THE COURT: So you want me to rule on your motion
20 and set a trial date after I move.

21 MS. HARPER: If that's possible, Your Honor, I'd
22 prefer that, just from a procedural, to protect this --

23 THE COURT: But if you believe that setting a trial
24 date you're waiving that?

25 MS. HARPER: I don't -- no, not necessarily.

1 THE COURT: Don't know? I don't know, Ms. Harper.
2 You've said you've researched it.

3 MS. HARPER: Yes. I'm concerned with moving forward
4 -- with agreeing to move forward at any point without a
5 ruling on the motion.

6 THE COURT: All right. So we can set dates for the
7 motion.

8 MS. HARPER: Thank you, Your Honor.

9 THE COURT: (Indiscern.) what to do after that. So
10 you believe that -- you want to file a motion -- we're going
11 to call it directed. I don't know what the correct term is,
12 because you don't believe that's what it's called, because
13 it's not a jury. But I've done them. I don't know what
14 people call them. I can't --

15 MS. HARPER: (Indiscern.).

16 THE COURT: -- recall just what they've said. I
17 mean, they've called them something. I don't think they're
18 directed verdict, but they're just saying dismissed for
19 failure to submit -- I don't know.

20 All right. So how much time do you need to -- you're
21 going to need to get the transcript.

22 MS. HARPER: Yes, Your Honor.

23 THE COURT: All right. John, my question was aren't
24 we getting transcripts in the ordinary time, like 7, 14, 30?

25 THE CLERK: Yeah, I think so. Yeah, I haven't heard

1 of any problems with it.

2 THE COURT: Any problems. It's just going to be
3 more expensive if you do it -- the difference between 14 and
4 30 -- well, I know you don't want it on 7 days. That's going
5 to be astronomical. So it's 7, 14, and 30, John?

6 THE CLERK: Yeah, I think -- yeah, it's like
7 overnight, 7, 14, 30.

8 THE COURT: You know we're not doing overnight.

9 THE CLERK: No.

10 MR. FILIPOVIC: It was this thing that was giving me
11 a headache. Now I feel better.

12 THE COURT: Well, I have one and unfortunately, I --

13 MR. FILIPOVIC: Squeezing my head and it was going
14 to --

15 THE COURT: I can't blame it on that, I have a
16 headache. Just on a --

17 MR. FILIPOVIC: Don't ever buy these.

18 THE COURT: It has nothing to do -- some of it's,
19 you know, a little aggravation, but some of it has nothing to
20 do with anybody. It's just it is what it is.

21 So Ms. Harper, how many days before you want to be able
22 to file your motion?

23 MS. HARPER: I would say at least 30, Your Honor, to
24 allow us time to get and digest the transcript.

25 THE COURT: Well, you can't get -- if you're

1 ordering it in 30 days, you're going to need after that.

2 You're going to get it in 30 days.

3 MS. HARPER: No, no, no. I was saying perhaps if we
4 were to request it on a two week turn around that --

5 THE COURT: I mean, it's up to you.

6 MS. HARPER: Yeah.

7 THE COURT: I mean, if you want a two-week
8 turnaround, I can just tell you the difference in cost may be
9 a bit.

10 MS. HARPER: Okay.

11 THE COURT: I mean, I know, John, I ordered one and
12 it was a \$200 difference.

13 MS. HARPER: That's true.

14 THE COURT: Mine was pretty short. I don't know.

15 MS. HARPER: Your Honor, if your schedule has
16 (indiscern.) to allow us to do a regular order date, non-
17 expedited, then I shouldn't be throwing around the City's
18 money at this time.

19 THE COURT: I know. And that's my money too.

20 MS. HARPER: Yeah.

21 THE COURT: That's all our money.

22 MR. FILIPOVIC: That's all our money. That's right.

23 THE COURT: It's all our money. Even if you don't
24 live in the city, you pay some wage taxes.

25 MS. HARPER: If there's time to allow us --

1 MR. FILIPOVIC: And we do, Your Honor. We both live
2 in the city.

3 MS. HARPER: We will order a non-expedited
4 transcript.

5 THE COURT: Right. So order it in 30 days, because
6 I'm not going to get -- counsel, I have trials every Monday
7 and Friday until October.

8 MS. HARPER: Okay.

9 THE COURT: So the likelihood I'm going to get to
10 this very soon is slim to none, because I still -- you know,
11 we're trying to catch up on matters that were previously
12 scheduled. So if 30 days, if you ordered it tomorrow or
13 tomorrow -- no, not tomorrow, Saturday. You ordered it on
14 Monday for 30 days -- well, first of all, he's going to --
15 has to call and get a quote. Whatever it is, you're going to
16 need it in 30 days. Do they give you a check before you
17 order or have you order?

18 MS. HARPER: That's a tough one for us. I'd rather
19 not get into it.

20 THE COURT: No, that was to John. John, will they
21 order it before you get the check or after you get the check?

22 THE CLERK: To be completely honest with you, I am
23 not overly experienced with ordering transcripts, so I'd have
24 to ask Tasha.

25 THE COURT: Okay. I know Eileen might, but she's

1 not on.

2 MR. FILIPOVIC: You know, in my experience, Your
3 Honor --

4 THE CLERK: Hold on. Eileen is on my phone right
5 now.

6 THE COURT: All right. Well, ask her.

7 MR. FILIPOVIC: Every other litigant, we have to pay
8 for transcripts when you order them. That's how it works.

9 THE COURT: I think that's the process.

10 MR. FILIPOVIC: Maybe that's -- maybe the City is
11 treated differently, but not, you know --

12 THE COURT: I don't think so.

13 MS. HARPER: No. I thought she was directing the
14 question to me, counsel. So that's why -- I thought she was
15 asking whether I pay up front or whether --

16 THE COURT: Well, I was asking John to make sure,
17 because counsel will give you (indiscern.) -- I don't know
18 how long it would take you to get a check. If I recall, it
19 took quite a while from some previous matters.

20 MS. HARPER: It did, Your Honor.

21 THE COURT: I think you'd have to -- you know, you'd
22 get it, you bring them the check, and then when they get the
23 check, they order it.

24 MS. HARPER: Yes.

25 THE COURT: I don't think the Court Reporter works

1 until they get their money up front.

2 MS. HARPER: Right.

3 THE COURT: Sometimes the Court orders it, but I'm
4 not about to spend the Court's money. I mean, I order them
5 if I need them.

6 THE CLERK: Judge?

7 THE COURT: Yes?

8 THE CLERK: Eileen just told me that yeah, the ESR
9 gets the check first here.

10 THE COURT: Right. That's -- I understood that. So
11 Ms. Harper, it'll be 30 days from the order. And then you'll
12 file it as a regular motion, and they'll get to respond in a
13 regular motion, (inaudible) a hearing on the date, and then
14 I'll hear it on that date. I don't know. I mean, we're
15 looking at a bit of a time now. Now, we're looking at right
16 now is August the 21st, right? That means that if you order
17 it on Monday or any time next week, we're not going to get it
18 until sometime in September, after the 21st.

19 You're going to file your motion. I'm going to give you
20 a week after that to file it. I know it's a little crunchy,
21 but you know, unless you say that you need two -- you know,
22 need more than seven days, I'm presuming you'll start working
23 on it. You have your notes. Seven days after that, after
24 you receive it to file your motion. And how much time do
25 they get? Do they get 14 days? What's the regular motion

1 response time?

2 MS. HARPER: If we only have 7 -- if we had 14 days,
3 I would see where they might get 7 is my usual.

4 MR. FILIPOVIC: No, it's 14 days. In the Eastern
5 District, it's 14 days for the response to the motion.

6 THE COURT: Is this governed by regular motion
7 practice?

8 MR. FILIPOVIC: I don't see why not, Your Honor.

9 THE COURT: I don't know. It's an adversary.
10 Sometimes things are different unless I say otherwise. And
11 then maybe you get 30 days. I don't know.

12 MR. FILIPOVIC: We don't need more than 14, Your
13 Honor, after they file their motion.

14 THE COURT: Right. That's what I'm only telling you
15 that, you know, it could be that you get more because it's a
16 motion in an adversary, and the federal rules governing to
17 litigation might apply. But if you think the rules for a
18 regular standard rules apply because I don't know what rules
19 govern that specific motion. Things at trial are a little
20 bit different than our regular motion practice, sometimes.
21 Not all the time. For instance, a motion for summary
22 judgment is governed by --

23 MR. FILIPOVIC: Yeah.

24 THE COURT: -- the rule of the federal rules. So
25 that's why I am saying. So you want two weeks. Ms. Harper,

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1 I'll give you two weeks after receiving the file. And then
2 they get two weeks after the filing to respond. Ms. Harper,
3 when you file it, you put those 14 (inaudible) notice of
4 motion.

5 MS. HARPER: Yes, Your Honor.

6 THE COURT: And then that way there's a couple of
7 reasons why. One is they have X amount of time to respond,
8 and then contact Ms. -- I guess we can schedule it in the
9 ordinary course. Well, not really, because if this is going
10 to be argument, I'm not doing this on a regular motion day.
11 So what you do is when you get ready to file it, we'll put
12 his -- make sure he gets his 14 days, and then you contact
13 Ms. Godfrey for a hearing date so we can specially list it.
14 Okay?

15 MS. HARPER: Okay.

16 THE COURT: And then, counsel, you'll respond and
17 we'll have a hearing. And then if I deny the motion, I'll
18 set a trial date if Ms. Harper says wants to, you know,
19 evidence. I don't know. All I'm going to say is whether it
20 was sufficient. I don't know. I don't know. I have no
21 clue. Okay?

22 MR. FILIPOVIC: Fine.

23 THE COURT: Anything further from anybody? Mr.
24 Offen, that means Mr. Hassan at this time doesn't need to
25 testify. But if Ms. Harper goes forward, he may just have to

1 be available. I don't know what that means. We're looking
2 at November maybe. I don't know. Okay?

3 MR. OFFEN: Thank you, Judge. That's the
4 arrangement I made with everybody. He'll be available as
5 long as he knows the date, and he's available to testify.

6 THE COURT: It is what it is.

7 MS. HARPER: Thank you, Mr. Offen.

8 THE COURT: All right. It's Friday at 5:30.

9 MR. OFFEN: Have a nice weekend, everybody.

10 THE COURT: Everybody, unless -- there's nothing
11 further from anybody, correct, before I adjourn?

12 MR. FILIPOVIC: Nothing further.

13 THE COURT: We have a trial Monday, right? No. We
14 don't. That was my objection date. Never mind. Okay. So
15 court is adjourned until Tuesday at 10:30. Okay?

16 MR. FILIPOVIC: Thank you, Your Honor.

17 THE COURT: All right. Thank you. And everybody
18 stay safe and have a good weekend.

19 ALL: Thank you.

20 THE COURT: All right, bye-bye.

21 (Court adjourned)

22

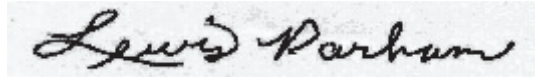
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



9/24/20

Signature of Transcriber

Date

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA**

In re:

Toppin v. Williams et al
Debtor(s)

Lyndel Toppin
Plaintiff

–v–

: Bankruptcy 18–13098–mdc

Jewell Williams
Defendant

: Adversary No. 18–00137–mdc

***NOTICE OF FILING OF TRANSCRIPT
AND OF DEADLINES RELATED TO RESTRICTION AND REDACTION***

A transcript of the proceeding held on 8/21/2020 was filed on 9/24/2020.

The following deadlines apply:

The parties have until 10/1/20 (seven (7) calendar days from the date of filing of the transcript) to file with the court a Notice of Intent to request Redaction of this transcript. The deadline for filing a request for redaction is 10/15/20 (21 days from the date of filing of the transcript).

If a Request for redaction is filed, the redacted transcript is due 10/25/20 (31 days from the date of filing of the transcript).

If no such notice is filed, the transcript may be made available for remote electronic access upon expiration of the restriction period, which is 12/23/20 (90 calendar days from the date of filing of the transcript) unless extended by court order.

To review the transcript for redaction purposes, you may purchase a copy from the transcriber (contact the court for contact information) or you may view the document at the clerk's office public terminal.

For the Court

Date: 9/24/20

Timothy B. McGrath
Clerk of Court

By: Tasha D Dawsonia
Deputy Clerk